BRITISH COLUMBIA
POLICE
COMPLAINT
COMMISSIONER

2004
ANNUAL REPORT

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POLICE COMPLAINT
COMMISSIONER
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Speaker of the Legislative Assembly
Suite 207
Parliament Buildings
VICTORIA, BC V8V 1X4

Dear Mr. Speaker:

It is my honour to present to you and to the members of the Legislative Assembly the 2004 Annual Report for the Office of the Police Complaint Commissioner.

This report has been prepared in accordance with section 51.1(1) of the *Police Act*.

Yours truly,

Dirk Ryneveld, Q.C.,
Police Complaint Commissioner

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Commissioner's Message – Striking the Right Balance

As I reflect on my second year in office, I realize that much of what we have been doing is based on the need to "strike the right balance" between maintaining public confidence in the police complaint process, and earning the respect and trust of the police that the process treats them fairly.

In my last Annual Report for 2003, under the heading of "Restoring Public Confidence", I expressed optimism for the future. To a large degree, that optimism appears to have been warranted. There are, of course, always disappointments and frustrations encountered on the path to progress. The year 2004 was no exception. In general, I have been gratified by the way in which most BC police departments have dealt with this office and have assisted us in fulfilling our mandate. The calibre of personnel assigned to the various internal affairs or professional standards departments of municipal police forces has been excellent. These men and women have worked diligently and professionally with our staff.

In the process of interacting with police investigators, union representatives and individual members of the various police departments, and by ensuring that our decisions were impartial, fair and reasoned, even where we took issue with police conduct, we have to a large degree begun to earn the trust and respect of the various police agencies in this province. Those same features of our work – impartiality, fairness, integrity, independence - have also been critical features in the restoration of public confidence in the Office of the Police Complaint Commissioner.

We shall continue to hold police officers and agencies accountable for their actions by insisting on thorough and fair investigations into public complaints. By our reasoned reporting, we will ensure that the process is transparent. We will encourage informal resolution where appropriate, and the prompt disposition of complaints that are without merit. When we are dissatisfied with the quality of an internal investigation, we will either order a further investigation or order an external investigation. When we have serious issues with the adequacy of an investigation into police misconduct, or with the substance of a decision by a Discipline Authority (usually the Chief of Police) about whether a discipline default has occurred and, if so, what discipline should result, we will determine whether it is in the public interest to arrange a Public Hearing. Where

we are persuaded that circumstances dictate that other agencies such as the Attorney General, the Solicitor General or Police Board should act in some fashion, we will make recommendations to those agencies. In all these ways, we will continue to strive to strike the right balance, and to do so by carrying out our statutory functions impartially, fairly and transparently, without fear or favour from any quarter.

We are encouraged by the fact that the Select Committee on Finance approved the request for a modest increase in our operating budget to enable us to hire an additional investigative analyst, and to fulfill our legislated mandate with respect to outreach, training and mediation. As to the latter, I requested funding to start a mediation pilot project in 2005, and am gratified that my request for $50,000 to this end was approved. We will be striving to develop a program that will increase the number of informally resolved complaints, provide mediation on others, and thereby reduce the number of full investigations necessitated where matters cannot be resolved. Needless to say this "seed money" cannot possibly cover the costs of mediation, so we will have to persuade the various police departments to participate in the mediation process financially as well as administratively. Successful mediation will undoubtedly result in saved costs and improved public relations for the police. Further, it is my experience that a complainant is often much more satisfied with a mediated resolution than with a decision imposed by someone. Hence it is in the public interest to promote informal or mediated resolutions wherever the circumstances so warrant.

My staff and I have been extremely busy in 2004 with the review of files, conducting Public Hearings, dealing with the public, as well as speaking to various agencies about the role of the Office of the Police Complaint Commissioner. We have attended the graduation ceremonies for each class at the Justice Institute, we have spoken to legislative interns, numerous bar association sub-sections, public forums, and University law classes at both UBC and UVIC. We have attempted to respond to each invitation to speak at and participate in functions and meetings where we could inform the public about our legislated role and explain the process.

I was honoured to have been elected President of the Canadian Association of Civilian Oversight of Law Enforcement (CACOLE) last year at the annual conference in Toronto. In that capacity I was invited and hosted by the government of Portugal (along with Peter Tinsley, the former head of the SIU in Ontario) to present a paper on civilian oversight of police at both Lisbon and Porto last November. Those lectures were attended by a total of more than 600 police officers of all rank from the 12 different types of police agencies in Portugal, as well as generals, government officials and foreign delegates on policing from Spain, Austria and elsewhere. Most democratic countries worldwide are interested in adopting the proper model to deal with complaints against the police and ensuring an accountable and transparent process to deal with such complaints that strikes the right balance of fairness to both the public and the police. Those in attendance seemed very impressed with our system in British Columbia.

CACOLE is planning our 2005 annual conference to be held in Montreal, from October 3rd through 5th. Attendance is anticipated from representatives of many European and

African countries in addition to our North American colleagues. I will, in this context, be promoting the concept of establishing an international association of civilian oversight and hope that the Montreal conference will be the nucleus for its creation.

Turning to the issue of processing files in the office, we noted a decrease in the number of formally lodged complaint files in 2004 from the previous year, but at the same time noted a substantial increase in the number of general inquiries from members of the public. After discussion with my staff, an explanation of our role, their rights, and the process, many inquiries did not result in a formal complaint being lodged. Often we found that the initial contact with our informed and helpful staff satisfied the member of the public's need for information without engaging the full process of filing of a Form 1 complaint, referral to the police for an investigation, and subsequent decision by the Discipline Authority. Although these enquiries and contacts with the public do not form part of our statistic-keeping for 2004, their increased incidence prompted me to request that our staff start keeping those statistics in 2005. In the first three months of 2005, we have had 92 such general inquiries.

That said, our records indicate that we opened 372 new formally lodged complaints in the 2004 calendar year, down about 18% from 2003 when we opened 456 new files. It must be remembered however, that the 2003 statistic includes the collection of approximately 60 files that came "in a bundle" from the Pivot Legal Society, which may have resulted in an anomaly in the 2003 intake statistic. Nevertheless, those 60 files had to be dealt with during the course of 2004 and many are still ongoing in 2005. One other possible explanation for the reduction in formal complaints in 2004 is that our oversight has had a salutary effect. We would like to think that some of our observations and suggestions for training and changes in policy have had a positive influence resulting in improved practice with a corresponding decrease in complaints by the public.

I am pleased to note that we closed more files (393) in 2004 than we opened in 2004 (372), and more than we closed in 2003 (366). The statistics can be reviewed in detail elsewhere in this Annual Report with appropriate charts and graphs to assist the reader.

Significant time, energy and resources were also dedicated to the conduct of various Public Hearings that took place in 2004. Details of those Public Hearings can be found at pages 15 and 16 of this Annual Report.

It should be noted that I did not in 2004 arrange any Public Hearing based on my disagreement with a Disciplinary Authority's decision. The one Public Hearing I was required to arrange in 2004 (Stanley Park) was as a result of a request for a Public Hearing as of right by the Respondent police officers who were dismissed.

I did in 2004 find it necessary in the public interest to order an external investigation by the Victoria Police Department into the death of Robert Bagnell, an individual who died in a Vancouver hotel on 23 June 2004 while in custody shortly after having been subdued by the TASER administered by members of the Vancouver Police Department.

The reason that I ordered an external investigation was that there were concerns regarding delays in disclosure by the VPD to the family as to how Mr. Bagnell died and that the TASER was involved shortly before his death. The way in which this disclosure was handled by the VPD created what was in my view an adverse perception of the VPD to conduct an impartial investigation.

In light of the fact that there were also significant emerging concerns regarding the possible lethality of TASERS when used by police, I deemed it to be in the public interest to request Chief Constable Paul Battershill of the Victoria Police Department to review the present use of force protocol and make such interim recommendations as he deemed appropriate for the use of the TASER by Police officers in the Province pending the results of emerging studies presently underway. Both the external investigation into the death of Mr. Bagnell and the TASER review are presently ongoing by the Victoria Police Department.

As I promised in my Commissioner's Message in the 2003 Annual Report, my staff, our legal counsel Frank Falzon, and I have also spent a great deal of time and energy in analyzing the shortcomings of Part 9 of the present *Police Act* and making recommendations for improvement by way of legislative change. These proposals build on the work of the Special Committee of the Legislature whose extensive hearings and recommendations in 2001/02 have not yet given rise to urgently needed legislative reforms. I have therefore not only prepared a White Paper that explains the rationale for proposed changes, but have also taken the step of incorporating those suggestions in a new draft statute to show how those changes might appear, as drafted. I propose that the new *Police Complaint Act* replace the present Part 9 of the *Police Act*. The White Paper outlines detailed reasons why that recommendation should be favourably considered by the Legislature.

Advance courtesy copies of our White Paper and Draft Police Complaint Act have been sent to stakeholders and interested parties for their review, with an invitation to forward their comments. I trust that this consultative process will dovetail with the Solicitor General's review of the *Police Act* and thus expedite the process of implementing these urgent legislative reforms. The White Paper and the proposed Police Complaint Act are included in this Annual Report as Appendices "A" and "B" respectively.

The urgent need for legislative reform having been noted, I wish to re-iterate my earlier-stated view that British Columbians are, overall, fortunate to be served so well by our police forces. The men and women who serve the public in their capacity as police officers usually do so with skill and professionalism, often in very difficult situations. Moreover, it is fair to observe that they do so in a climate where more is expected of today's police officers than of their predecessors, even while police departments are often understaffed, and lack sufficient members with seniority or experience on the job to provide the service they would like to provide.

It is precisely because police generally do a commendable job that it is critical for there to be a process to address those instances where they fall short, or are perceived to fall

short. In this context, I can do no better than repeat what I stated in the White Paper, at page 3:

> *[T]here is an inextricable link between democracy, the rule of law and police accountability. Police serve a function that is vital to the proper operation of a free and democratic society. Police are rightly and necessarily given extensive powers. Police power is necessary to ensure that free people are protected and that their duly enacted laws are enforced. Police must be authorized to do things that would be illegal for ordinary citizens, and police must not be unduly fettered in the exercise of those powers. But the extensive power of police and the realities in which they exercise their power also means that everyone – the public and the police – must appreciate the critical importance of safeguarding proper standards of police conduct by civilian oversight of any complaints process in which police investigate police. Free and democratic societies must have effective civilian oversight processes for addressing allegations of individual or systemic breaches of proper police conduct. The processes for doing so must be fair to police officers, but they must also be effective in getting to the truth. Police accountability is as important for police as it is for the public.*
>
> *Police accountability is, in reality, a precondition to the grant of police powers. Fair-minded persons will not perceive police to be legitimate or credible without effective civilian oversight of any system where police are allowed to investigate police. As experience in other jurisdictions makes vividly clear, police credibility and legitimacy, once undermined, are extremely difficult to restore.*

As I mentioned earlier in this report, there are differing models for civilian oversight of police across Canada and indeed, worldwide. I am a strong believer in the British Columbia model that allows for the police to investigate the police *provided* there is effective civilian oversight by an officer of the legislature who is independent of the police and Executive branch of Government. It is my strong view that we must not "throw the baby out with the bathwater" by proposing a different model just because there are some problems encountered with our present model. We should instead address those problems directly. I believe that our recommendations for legislative amendment, if adopted, will ensure that the civilian oversight model will be a model to be emulated around the world.

Although we have admittedly encountered some significant difficulties with respect to attempting to enforce our *Police Act* role of "policing the police", we have worked through many of those problems. I remain optimistic for the future. Indeed, I want to go on record as stating that most of the municipal police departments have shown firm support for the concept of civilian oversight and have co-operated fully with our office. They have been open, accountable and transparent. They have complied without

complaint to our requests for more information and have undertaken external investigations at my request, often at significant expense in both money and resources. If all the municipal police forces in this province were as committed to embracing both the letter as well as the spirit of Part 9 of the *Police Act*, our job would be greatly simplified.

Thus, despite some ongoing problems with historical files, over the past two years there has been a slow but incremental change in attitude by even forces that have in the past been somewhat defensive and even recalcitrant. Recently, at least with respect to new files, there has been indication of more cooperation with our office and less resistance to the concept of civilian oversight. The only exception to that general trend appears to be the Vancouver Police Department's reaction to the external RCMP investigation into the Pivot complaints. My conclusions respecting that matter can be found on our website. My decision sets out in considerable detail the particular problems with the current Part 9 of the *Police Act* that may have contributed to the unsatisfactory way in which this matter was conducted by senior management at the VPD, and my recommendations for an audit of the VPD to be conducted by the Ministry of the Solicitor General.

In my view many of the problems encountered in this and other files will be practically eliminated with the enactment of new legislation. I sincerely believe that with the enactment of our proposed amendments to the legislation, the final steps necessary to effect a necessary change in attitude will be achieved, and the *Police Act* complaint process will achieve its full promise as a fair, balanced, efficient and effective process.

I wish, finally, to state that I am indebted to my committed and hard working staff for their dedication and professionalism in carrying out our mandate. We maintain two offices in Victoria and Vancouver with a total staff of only six people – a commissioner's counsel, three senior investigative analysts and two support staff. I am very grateful to work with, and be assisted by, these quality people.

Respectfully submitted,
Dirk Ryneveld, Q.C.
Police Complaint Commissioner
June 2005

Role, Mandate and Purpose

The Office of the Police Complaint Commissioner is an independent agency established under Part IX of the *Police Act* to ensure that complaints against municipal police in British Columbia are handled fairly and impartially.

Complaints concerning the conduct of sworn members of the following municipal police departments, or complaints about the policies of the department, fall within the mandate of the Office of the Police Complaint Commissioner:

- Abbotsford Police Department
- Central Saanich Police Department
- Combined Forces Special Enforcement Unit - British Columbia (*formerly the Organized Crime Agency)*
- Delta Police Department
- Kitasoo Xaixasi Police Service
- Nelson City Police Department
- New Westminster Police Services
- Oak Bay Police Department
- Port Moody Police Department
- Saanich Police Department
- Stl'atl'imx Tribal Police
- Vancouver Police Department
- Victoria Police Department
- West Vancouver Police Department

As well, beginning in 2005, the Office of the Police Complaint Commissioner will also monitor complaints against members of the Greater Vancouver Transportation Authority Police Service.

The Office of the Police Complaint Commissioner provides an accessible way for the public to complain to an independent body about the conduct of any municipal police officer. The OPCC was established to ensure that the complaint process is conducted with impartiality and fairness, both to members of the public and to members of the municipal police forces.

Police Complaint Commissioner's Jurisdiction & Role

The Commissioner has statutory jurisdiction over complaints lodged against municipal police officers and tribal police officers or about the services or policies of a municipal police department or designated tribal police service.

The Police Complaint Commissioner for the Province of British Columbia does not have jurisdiction over the handling of complaints against members of the Royal Canadian Mounted Police. The RCMP has a federal Commission to handle complaints against their sworn members. Complaints received at the Office of the Police Complaint Commissioner respecting an RCMP officer are forwarded to their Commission.

The Police Complaint Commissioner oversees the handling of all Public Trust, Service or Policy, or Internal Discipline complaints.

Police Complaint Commissioner's Mandate & Powers

The *Police Act* requires the Commissioner to:

- Oversee the handling of complaints about municipal police or police services or policies.
- Receive complaints from any source.
- Maintain a record of those complaints and their dispositions.
- Compile statistical information about complaints about municipal police of police services or policies.
- Report regularly to the public about complaints, complaint dispositions, and the complaint process.
- Inform and assist the public, complainants, police officers, police boards and adjudicators with the complaint process and the handling of complaints.
- Periodically review the complaint process and make recommendations for the improvement of that process in the Annual Report.
- Establish procedures for mediation and guidelines for informal resolution of Public Trust complaints.

The *Police Act* permits the Commissioner to:

- Engage in or commission research on any matter relating to the police complaint process under Part 9 of the *Police Act*.
- Make recommendations to police boards about written policies or procedures that may have been a factor that gave rise to a complaint.
- Prepare guidelines about the receiving of complaints generally.
- Make recommendations to the director of Police Services or the Attorney General that a review or audit be undertaken to assist police in developing training designed to prevent recurrence of problems revealed by the complaint process.
- Make recommendations to the Attorney General for a public inquiry under the provincial *Inquiry Act*.
- Refer a complaint to Crown Counsel for possible criminal prosecution of a police officer.

The Code of Professional Conduct

All sworn police officers in the Province of British Columbia are bound to perform their duties according to the *Code of Professional Conduct Regulation*, B.C. Reg. 205/98. The purpose of this *Code of Professional Conduct* is to establish a code of conduct that is applicable to all police officers and to provide a guide to assist municipal police departments in delivering fair, impartial and effective police services to the communities they serve. The ultimate aim of this *Code* is to maintain the public confidence in the police by ensuring that police officers are accountable to the public in a way that is fair to both police officers and to the public, yet not unduly interfering with the ability of the police to carry out their lawful duties.

The *Code of Professional Conduct* statement of core values of the affirms that all police officers:

(a) accept the duty to act without favour or personal advantage;
(b) are committed to treating all persons or classes of persons equally, regardless of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age or economic and social status; and
(c) agree to uphold rights and freedoms guaranteed or protected by law.

The *Code of Professional Conduct* identifies 12 potential "disciplinary defaults". They are:

- Discreditable conduct
- Neglect of duty
- Deceit
- Improper disclosure of information
- Corrupt practice
- Abuse of authority
- Improper use and care of firearms
- Damage to police property
- Misuse of intoxicating liquor or drugs in a manner prejudicial to duty
- Conduct constituting an offence
- Being a party to a disciplinary default
- Improper off-duty conduct

The *Code* also provides guidance to Discipline Authorities as to the appropriate corrective or disciplinary measures to be imposed. If appropriate, corrective measures are preferred to purely punitive measures. The goal for everyone, the officer, the complainant, the general public and the department involved, is to ensure that the misconduct committed is not repeated or continued. Corrective measures seek to address the problem and provide training or direction to ensure that the officer

understands why the particular misconduct is unacceptable and how to improve their performance as a police officer. The Discipline Authority may impose one or more of the following measures as provided by the *Code*:

- Verbal reprimand
- Written reprimand
- Direction to undertake professional counseling
- Direction to undertake special training or re-training
- Direction to work under close supervision
- Suspension without pay for not more than 5 scheduled working days
- Transfer or re-assignment
- Reduction in rank
- Dismissal

Advice as to future conduct (managerial direction) is not a measure listed under Section 19 of the *Code of Professional Conduct Regulation*. However, the Commissioner views it as a corrective measure for the following reasons: the Discipline Authority has found that the circumstances of the complaint warrant that some form of action is needed to correct the behavior of the subject officer; a senior officer gives the subject officer advice as to future conduct; and the Discipline Authority records the complaint and the advice in the subject officer's personnel record. However, the advice is not recorded in the subject officer's Record of Discipline because it is not disciplinary action as defined in the *Code*. All other disciplinary measures are recorded in the subject officer's Record of Discipline.

The Complaint Process

Who can make a complaint?

Anyone who has concerns about the actions or comments of a municipal police officer or the service provided by a municipal police department may make a complaint.

How are complaints made?

A complaint may be made orally or in writing, but before it can be processed under the *Police Act*, it must be made in writing, on an approved form (Form 1 – Record of Complaint). After a complaint has been made, it can be withdrawn at any time.

What happens to the complaint?

The Office of the Police Complaint Commissioner forwards all complaints received to the appropriate police department for investigation. If the complaint is made at a police department, copies must be forwarded to the Office of the Police Complaint Commissioner.

The police department investigating a complaint must report to the Police Complaint Commissioner at each stage of the investigation to advise the Commissioner what is happening with the complaint. The complainant is also provided with ongoing information about his or her complaint.

Three types of complaints can be made: *Public Trust, Service or Policy*, or *Internal Discipline*. Depending on the circumstances described in the complaint, all complaints will be characterized as one of these or as a combination of two or more, referred to as a *compound complaint*. Each type of complaint is processed differently.

Most complaints fall under the Public Trust category and are processed in the following manner:

Public Trust Complaints

Public Trust complaints affect the relationship between a police officer and the community and allege specific misconduct on the part of a police officer. A Public Trust complaint will be resolved in one of three ways:

1. **Informal Resolution**

   Public Trust complaint may be resolved informally by face-to-face discussions, by letter, by telephone, or with the help of a professional mediator. A complaint is resolved when both parties (the complainant and the police officer) have given their signed consent, after which either party has 10 days to withdraw his or her consent in writing. Otherwise, the informal resolution is final and binding.

2. **Summary Dismissal**

   A Public Trust complaint may be dismissed if there is no likelihood that further investigation would produce evidence to substantiate the complaint; if the complaint concerns a matter that happened more than 12 months ago; or if the complaint is deemed to be frivolous or vexatious. If the complainant disagrees with the department's decision to dismiss the complaint, he or she may apply to the Police Complaint Commissioner for a review of the police department's decision.

3. **Investigation & Conclusion**

   A Public Trust complaint will be investigated if it is not informally resolved or summarily dismissed. The complaint will be investigated by the police department involved or in some circumstances may be referred by the police department or by the Police Complaint Commissioner to another police department to investigate.

   The investigation into a complaint must normally be completed within six months after the date the approved complaint form was filed. The Police

Complaint Commissioner may grant an extension of this time. If the complainant is not satisfied with the results of the investigation, he or she may apply to the Police Complaint Commissioner for a Public Hearing.

Service or Policy Complaints

Service or Policy complaints are complaints about the policies, procedures and services provided by a municipal police department and affect the relationship between the police department and the community. An example of a Service or Policy complaint would be a complaint that insufficient police officers were stationed at a public event.

Service or Policy complaints are the responsibility of each police board. The police board must advise the Police Complaint Commissioner and the complainant of the results, including what course of action, if any, was taken and must provide a summary of the results of any investigation or study.

The Police Complaint Commissioner cannot require a board to take any particular course of action regarding a Service or Policy complaint, but may make recommendations to the board.

Internal Discipline Complaints

Internal Discipline complaints concern police misconduct that is of concern to the officer's employer, but does not affect the officer's relationship with the public. An example of an Internal Discipline complaint would be that a police officer did not secure his or her firearm properly in the police locker. The principles of labour law apply to the investigation and processing of Internal Discipline complaints. The Public Trust complaint process does not apply.

Public Hearings

The *Police Act* empowers the Police Complaint Commissioner to order Public Hearings into complaints.

At the conclusion of an investigation into a complaint, both the complainant and/or the respondent police officer may request a Public Hearing.

If the respondent police officer has received a disciplinary measure more severe than a verbal reprimand, he or she has an automatic right to a Public Hearing on request.

If the complainant requests a Public Hearing, the Police Complaint Commissioner must determine if there are grounds to believe the hearing is necessary in the public interest.

The Police Complaint Commissioner may also arrange a Public Hearing without having received a request from either the complainant or the respondent police officer if the Police Complaint Commissioner believes that the Public Hearing is necessary in the public interest.

The Commissioner will consider the following factors before making the decision whether to arrange a Public Hearing:

- The seriousness of the complaint.
- The seriousness of the harm done.
- Whether a Public Hearing is need to discover the truth.
- Whether there was a flaw in the investigation conducted by the police department, the measures proposed are inappropriate or inadequate, or the Discipline Authority's interpretation of the *Code of Professional Conduct* was incorrect.
- Whether a Public Hearing is necessary to restore or preserve public confidence in the police as well as the complaint process.

Once the Police Complaint Commissioner has determined that the Public Hearing is in the public interest, the Commissioner must appoint an Adjudicator to preside over the hearing. Associate Chief Justice Dohm of the Supreme Court of British Columbia nominates a retired justice of the Supreme Court or a retired judge of the Provincial Court of British Columbia. The Commissioner then appoints that individual as Adjudicator for the purposes of that particular Public Hearing.

The Commissioner appoints Commission Counsel who may at his discretion call any witness who has relevant evidence to give, whether or not the witness was interviewed during the original investigation. Commission Counsel may also introduce into evidence any record, including any record of the proceedings, concerning the complaint up to the date of the hearing.

The Adjudicator must decide if the alleged disciplinary default has been proven on the "civil standard of proof", that is, *on the balance of probabilities*. If the disciplinary default is proven, the Adjudicator may impose a disciplinary or corrective measure, or may confirm, increase or reduce the disciplinary or corrective measures already proposed by the Discipline Authority.

Once a decision has been reached at the Public Hearing, the only appeal available to that decision is to the Court of Appeal on questions of law.

The rules governing Public Hearings and Office of the Police Complaint Commissioner policy regarding the ordering of a Public Hearing may be found on the OPCC website at www.opcc.bc.ca .

Public Hearings in 2004

Following are brief summaries of the Public Hearings that were held in 2004. Full decisions rendered by the Adjudicators on concluded Public Hearings may be found on the OPCC website at www.opcc.bc.ca Schedules for any upcoming Public Hearings are also listed on our website.

- ***PH2003-01***
  Constable David Bruce-Thomas
  Vancouver Police Department

  This was a Public Hearing into the death of Jeffrey Berg, who died while being arrested by members of the Vancouver Police Department on 22 October 2002. Upon review of the Vancouver police investigation, the Police Complaint Commissioner deemed that the investigation was flawed, and that the consequent decision by the Discipline Authority that no disciplinary default had occurred based on that investigation was therefore also suspect. On June 23rd, 2003, to ensure that there would be a full and proper determination made based on evidence under oath and subject to cross-examination as to the truth of what happened to Mr. Berg, a Public Hearing was ordered to be held into the matter. The Public Hearing commenced on September 13th, 2004 before adjudicator Brian Weddell Q.C., a retired Supreme Court Justice. Evidence did not conclude until December 10th, 2004. On 21 January 2005 Adjudicator Weddell found that the allegation of excessive use of force was not proved.

  Full reasons can be found at www.opcc.bc.ca

- PH2003-02
  Constable Reginald Forster and Constable Ryan D'Onofrio
  Vancouver Police Department

  This was a Public Hearing into the conduct of two Vancouver Police officers at GM Place on November 7th, 2002, after a Guns 'n Roses concert had been unexpectedly cancelled, resulting in near-riotous behaviour by some of the disappointed crowd.

  The two officers were accused of using excessive and unnecessary force against members of the public in two separate instances. The Public Hearing against both officers commenced on May 11th, 2004 before the Adjudicator retired

Supreme Court Justice Ross Collver, and concluded on June 9th, 2004. On June 22nd, 2004, Adjudicator Collver found that the allegations of excessive force against Cst. Forster in relation to Robert Parent were not proven to his satisfaction. However, he found that the allegations of the use of excessive force against both Cst. Forster and Cst. D'Onofrio in relation to Detlef Schroeder were proven, however their conduct did not warrant the imposition of discipline.

Full reasons can be found at www.opcc.bc.ca

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❖ PH2004-01
Constable Gabriel Kojima and Constable Duncan Gemmel
Vancouver Police Department

This Public Hearing arose from an incident that occurred in Stanley Park in Vancouver on January 14th, 2003. It is alleged that six members of the Vancouver Police Department apprehended four individuals on the Granville Mall, and "breached" three of the males to an area known as Third Beach, dropping off a female en route. Once at Stanley Park, these officers allegedly assaulted the three males. The officers were charged criminally, plead guilty in Provincial Court and sentenced. They were subsequently also disciplined by Vancouver Police Chief Graham following a Disciplinary Hearing on January 28th, 2004. Cst. Duncan Gemmell and Cst. Gabriel Kojima were dismissed as police officers and their colleagues, Cst. James Kenney, Cst. Chris Cronmiller, Cst. Raymond Gardner and Cst. Brandon Steele received lesser discipline. On February 17th and 25th, 2004 respectively, counsel for Constables Gemmell and Kojima requested that I arrange for a Public Hearing for their clients who had been dismissed. Following a review of the entire matter, on June 9th, 2004, the Police Compliant Commissioner confirmed Chief Graham's decision. However, Counsel for Constable Gemmell and Constable Kojima requested a Public Hearing and the Police Complaint Commissioner is required by the statute to arrange for a Public Hearing if so requested by Respondents who receive discipline greater than a written reprimand. Accordingly a Public Hearig was arranged to be held before Adjudicator Donald Clancy, a retired Supreme Court Justice.

The Case Management Conference commenced on 23 & 27 August, and continued on 1 October and 14 October. Due to difficulties with scheduling regarding the Respondents' counsel's calendars, the hearing of evidence could not begin until April 2005. The matter will likely conclude in June 2005 with the decision of Adjudicator Clancy.

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Complaint Dispositions

The Police Complaint Commissioner is required by section 50 of the *Police Act* to regularly prepare reports of the complaint dispositions made or reached during the reporting period.

The following are summaries of but a few of the complaints that were concluded during the period from January 1st to December 31st, 2004. Complaints may be concluded in a variety of ways and the following is intended to provide a representative sample of those dispositions, from informal resolutions and summary dismissals through to those involving disciplinary actions.

As noted earlier, possible corrective or disciplinary measures range from advice as to future conduct (managerial direction), verbal or written reprimands, suspensions for up to five days with or without pay, or dismissal from the police department. Only disciplinary measures are recorded in the subject officer's Record of Discipline.

With the exception of those cases that proceeded to Public Hearing, the disciplinary or corrective measures imposed reflect decisions made by the individual police department that employs the Respondent officer.

❖ ***File No. 1969 - Internal Discipline Complaint***
Default: Discreditable Conduct (x2)
Neglect of Duty

The on-duty Watch Commander had observed the respondent officer backing his vehicle into a church parking lot, against the one-way flow of traffic. The Watch Commander was concerned about the way the vehicle was being operated by the respondent officer as a collision had nearly occurred. Before the Watch Commander had the opportunity to speak to the officer about his driving, he received a complaint about the same officer using an unmarked police vehicle for personal use while off-duty, something which the officer had done on three previous occasions. The Watch Commander determined that both matters should be forwarded to a superior officer and the matters were referred to the department's Professional Standards Unit for investigation.

After reviewing the finding of the investigating officer, the Discipline Authority determined that with respect to the allegation of "Discreditable Conduct" (reckless driving) the allegation was not substantiated. With respect to the allegation of "Discreditable Conduct" (failing to comply with a standing order) and "Neglect of Duty" (leave a place of duty without permission or fails to return promptly) the allegations were substantiated. The respondent officer received a one-day suspension without pay.

❖ ***File No. 1484 - Public Trust Complaint***
Default: Improper Off Duty Conduct (x4)
Discreditable Conduct (x2)

The respondent officer is estranged from her husband, who is also a member of the same police department. On three occasions the respondent officer telephoned her estranged husband and left misleading and threatening messages concerning their son and a co-worker, whom the husband had been seeing. The respondent also, while on duty, assaulted the co-worker. The Chief Constable was apprised of the situation and an investigator was assigned to conduct an investigation. The investigator requested an Order for Investigation which the Police Complaint Commissioner granted, but while the criminal investigation proceeded, the *Police Act* investigation was temporarily suspended until the conclusion of the criminal investigation.

The Regional Crown Counsel for the area found that there was sufficient evidence to justify laying charges against the respondent officer, however he recommended that the matter be referred to the Alternate Measures Program. The respondent signed an Alternate Measures Agreement acknowledging the three allegations of leaving a false message, harassing telephone calls and assault. One of the conditions of this agreement was no contact with her husband. Yet within a short period of time after signing that agreement the respondent contacted her ex-husband again.

With the further allegations of misconduct, the Discipline Authority completed an extensive investigation into these complaints and came to the following conclusions:

Disciplinary Default #1 – Improper Off-Duty Conduct

The Discipline Authority determined that there was evidence to substantiate the allegation of improper off duty conduct in that the respondent did leave a false message concerning the well-being of her son. The officer received a written reprimand and an order to attend counseling.

Disciplinary Defaults #2 & #3 – Improper Off Duty Conduct

The Discipline Authority determined that there was evidence to substantiate the allegations of improper off duty conduct in the respondent leaving harassing and obscene telephone messages for the co-worker. The officer received a written reprimand and an order to attend counseling.

Disciplinary Default #4 - Improper Off Duty Conduct

The Discipline Authority determined that there was enough evidence to substantiate the allegation of improper off duty conduct in that the respondent left 62 harassing phone calls to her ex-husband on his cellular

telephone. The officer received a written reprimand and an order to attend counseling.

Disciplinary Default #5 - Discreditable Conduct

The Discipline Authority determined that there was enough evidence to substantiate the allegation of discreditable conduct in that the respondent did assault the co-worker while on duty. This complaint was informally resolved and resulted in a 4-day suspension without pay and an order to attend counseling.

Disciplinary Default #6 - Discreditable Conduct

The Discipline Authority determined that there was enough evidence to substantiate the allegation of discreditable conduct in that the respondent did telephone her ex-husband, in direct contravention of her Alternate Measures Agreement. This complaint was informally resolved and resulted in 1-day suspension without pay (concurrent to the above-noted 4-day suspension) and an order to attend counseling.

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❖ ***File 2171 – Compound Complaint (Public Trust & Service or Policy)***
Default: Abuse of Authority (x2)

The complainant in this matter was a juvenile who was arrested for being in a State of Intoxication in a Public Place (SIPP). The complainant was detained in cells for approximately seven and a half hours before being released from custody. There was no indication that the complainant was given access to call a lawyer or a parent while being detained.

A Form One Record of Complaint was filed at the Office of the Police Complaint Commissioner. The internal investigator assigned to this matter met with the complainant, his family and their lawyer. As a result of their meeting, an informal resolution was reached with respect to the Public Trust aspect of this compound complaint was reached.

The Service and Policy component of the complaint was presented to the Police Board, and the Board requested the Chief of police to investigate the service and policy aspect and report on his findings. The internal investigator assigned to this matter noted that under the *Young Offenders Act*, a young person has the right to have his or her parent contacted and advised of a charge against him or her. This section does not apply though to a young person arrested for SIPP who is not required to appear in court. The *Young Offenders Act* does not provide a young person with a right to access counsel, therefore a young person could have the same right to access counsel as an adult under section 7 of the *Offence Act*. The Investigator made the following recommendations to the Board:

(i) That the department's policy with respect to "Liquor Control and Licensing" be amended to include references to the relevant case law pertaining to a SIPP arrest;

(ii) That the *Hold SIPP Report* be separated from the *Prisoner Medical Information Sheet* and have the following sections added:

- a section entitled "Indicia of Intoxication" which lists all of the various indicia of intoxication with corresponding check boxes.

- a section entitled "Access to Telephone" which states where the prisoner requested access to a telephone, whether the access was granted, and if not, an explanation justifying the denial of access.

- a section entitled "Young Person" which states whether the prisoner is a young person and what attempts have been made to contact the prisoner's parents.

(iii) That the department's policy with respect to "Young Persons" and the "Prisoner Booking Policy" be reviewed and re-written so they are consistent.

The Police Board met and reviewed the Final Investigation Report and adopted the recommendations as set out.

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❖ ***File No. 1876 – Public Trust Complaint***
Default: Improper Off Duty Conduct

The respondent officer while off-duty had decided to visit a family member whom he had not spoken to in a number of years. He had parked his vehicle across the street from where the family member lived and fell asleep with his vehicle still running. The police were notified of the parked running vehicle. When the officers attended, they could smell alcohol on the respondent's breath. The respondent was given a 24 Hour Roadside Suspension and his driver's licence was seized. While being driven home by the officers, the respondent behaved in a belligerent manner. Approximately two days later the respondent telephoned the officers who had taken him home and apologized for the manner in which he had behaved.

The respondent's Deputy Chief Constable brought this matter to the attention of the department's Professional Standards Unit requesting that an investigation be completed. An investigation unfolded and the Discipline Authority found that there was enough evidence to substantiate the disciplinary default of improper

off duty conduct. The Discipline Authority determined that the officer should receive a written reprimand.

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❖ ***File No. 2166 – Public Trust***
Default: Abuse of Authority

The complainant lodged a Form 1 Record of Complaint at the Office of the Police Complaint Commissioner regarding two police officers continually appearing at her home and harassing her with respect to a personal injury claim. The disciplinary default alleged to have been committed was abuse of authority and the complaint was characterized as Public Trust.

The Discipline Authority ordered an investigation into the complaint, including a review of all previous complaint files received from this complainant, dating back to 1984. All the complaints have a common theme involving the complainant having a dispute with either her landlord, or another tenant, or the police member whom may have answered her calls. The Discipline Authority found that in over 80 per cent of the files, the complainant's alleged offences focused around some form of harassment. The Discipline Authority also found that all the complaints the complainant had initiated were found to be without substance. The complainant continuously in her dealings with the police and 9-1-1 staff used crude and vulgar language, made derogatory remarks of an ethnic and sexual nature, as well as made threats to have individuals removed from their homes by criminal gang members. The Disciplinary Authority summarily dismissed the complaint as frivolous and vexatious, pursuant to section 54(1)(a) of the *Police Act*.

The Office of the Police Complaint Commissioner reviewed the Discipline Authority's decision and confirmed the Discipline Authority's decision and found the complainant's vitriolic and racist language particularly disturbing.

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❖ ***File No. 1956 – Public Trust***
Default: Abuse of Authority (x2)

The complainant in this matter filed a Record of Complaint at the Police Complaint Commissioner's office. The complainant alleged that while she was away, two police officers facilitated the entry of two individuals into her home by allowing a locksmith to change the locks on her front door. The individuals gained entry and the officers left the premises. The complainant alleged that a number of her belongings were stolen. The department upon receipt of the complaint commenced an investigation into this matter.

Following a thorough investigation, the Discipline Authority concluded that the two respondent officers did not commit the disciplinary default of abuse of authority. The complainant rented the apartment to the two individuals while she was away. A dispute over monies ensued resulting in the complainant changing the locks while the individuals were absent and withholding some of their property. Staff at the Residential Tenancy Office had advised the two individuals that a person is not allowed to hold personal property over money owing. Based on the Residential Tenancy Office documentation provided to the police officers, the statements of the two individuals, the locksmith and moving van being present, the Discipline Authority ruled that the officers had acted in good faith allowing the locksmith to gain access to the suite. The officers had looked through the suite to ensure nothing of value was inside. The individuals advised the officers that they would return the keys to the landlord, and the officers returned to their vehicle and left the area.

The Office of the Police Complaint Commissioner reviewed the complete investigation file and concurred with the findings of the Discipline Authority and confirmed the conclusion of the complaint as not substantiated.

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❖ ***File No. 2421 – Public Trust***
Default: Neglect of Duty

The respondent officer had taken a report of a theft from a vehicle in which a guitar case was stolen. The respondent officer and his partner attended at an addiction and rehabilitation center one block from the scene of the theft. The officers spoke with the manager of the centre who advised that he had seen a man enter the center with a similar guitar case approximately an hour earlier. The respondent officer requested the Acting Sergeant to attend. There was then a discussion between the Acting Sergeant and the supervisor of the center and it was agreed that the suspect's room would only be entered if there was a search warrant in place. They could knock on the suspect's door to confirm whether he was inside. There was no response and the officers left the centre, advising the manager to contact them should the suspect return.

The respondent officer, his partner and the Acting Sergeant discussed the issue of a search warrant and based on the facts, the Acting Sergeant assessed they did not have sufficient grounds to obtain a warrant.

A few hours later, the respondent officer met with the Sergeant and the Acting Sergeant to discuss the matter further. The respondent officer was told very clearly that in the absence of new information, a search warrant would not be approved. The respondent officer then asked if the manager of the centre could enter the suspect's room, to which he was told that there was no legal authority for such an entry.

The respondent officer, with another officer (who became a co-respondent), returned to the centre and went to the suspect's room with the nightshift building security person. They knocked on the door and when there was no response, the building security person opened the door slightly to see if the suspect was inside. The suspect was not there, but the officers saw a guitar case matching the description of the stolen case. The officers entered the room and retrieved the guitar case.

When the Acting Sergeant became aware of what had occurred, he reported the incident to his supervisors. The matter was referred to an external police agency to oversee the investigation of this Public Trust complaint.

The Discipline Authority concluded that the decision of the two members compromised the trust the department places in its members. The officers entering the man's room without a search warrant was in total disregard for the law, the direction of their supervisors and departmental policy. The members put the "noble cause" of law enforcement ahead of legality, following the ideal that "the end justifies the means."

The matter was informally resolved. Both respondent officers accepted responsibility for their actions and wrote apology letters that were forwarded to all members of the department, expressing their regret for their actions. The officer who insisted on entering the man's room also received a written reprimand which was placed on his personnel file. The guitar case had been returned to the gentleman earlier by the Acting Sergeant.

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❖ ***File No. 2404 – Public Trust***
Default: Discreditable Conduct (x2)

The complainant in this matter filed a Form 1 Record of Complaint with the Office of the Police Complaint Commissioner respecting an incident at a public beach. The complainant noticed two on-duty police officers playing football on their 4 x 4 All Terrain Vehicles (ATV's) parked on the grass. The complainant yelled at the officers to get off the grass, and that other citizens at the beach cheered the complainant for doing this. Another citizen also disagreed with the officers being there, because the fumes from the ATV's and the loud sounds were interfering with his picnic dinner. The complainant felt that the officers did not understand his concerns and they dealt with him in a patronizing and hostile manner.

The Internal Investigation Section of this department investigated this complaint. The Inspector who originated the program that was in place at this

particular beach met with the complainant and spent several hours discussing the complainant's concerns.

Subsequently the complainant contacted the Office of the Police Complaint Commissioner and advised that he wished to withdraw his complaint. The Internal Investigation Section met with the complainant again to ensure that the complainant's concerns were thoroughly addressed and the complainant withdrew his complaint.

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❖ ***File No. 2581 – Internal Discipline***
Default: Corrupt Practice

On October 28, 2003, the Office of the Police Complaint Commissioner received an Investigative Narrative from this police department respecting an internal discipline complaint involving an officer accessing CPIC (Canadian Police Information Centre) for personal reasons. A Senior Investigative Analyst at the Office of the Police Complaint Commissioner had been consulted prior to receiving this Investigative Narrative with respect to the characterization of this complaint.

The complaint involved a respondent officer making enquiries with respect to a vehicle that was parked outside his estranged wife's residence. The respondent had no jurisdiction in the area where he had spotted the vehicle, as well as the respondent officer was under bail conditions not to be at that address due an alleged spousal assault altercation that had taken place at his estranged wife's home. The query was done on the respondent officer's behalf by another police officer accessing CPIC on their terminal.

The Discipline Authority conducted an investigation into this incident. Continuation Reports were obtained from various police officers. A number of officers were interviewed and the respondent officer provided a statement with respect to his actions. The respondent had concerns about possible drug use in the matrimonial home and the wellbeing of his children.

The Discipline Authority was of the view that there was no evidence to suggest that the officer who had actually performed the CPIC query acted inappropriately. The Discipline Authority concluded that the respondent officer who requested the CPIC search should have officially reported to the police department his suspicions regarding the vehicle parked outside the matrimonial home, the possible drug activity at his house, and remained personally detached from the investigation. The Discipline Authority determined the complaint was substantiated and recommended the respondent officer receive operational guidance and advice to future conduct by executive management, which would

be consistent with sanctions imposed on similar cases involving inappropriate access of CPIC.

. . . . . .

❖ ***File No. 2255 – Public Trust***
Default: Abuse of Authority

A mudslide had occurred outside the residence of the complainant, where the respondent, as well as other officers, had attended the scene. The complainant was attempting to cross the police barrier to enter his residence when the respondent officer told him not to go near that area or he would be arrested. The complainant alleged that the respondent officer did not identify himself as a police officer, and was dressed in a toque and yellow rain slicker. An argument ensued when the complainant tried to explain that he was trying to get into his apartment complex. The respondent arrested the complainant and placed him in the back of the police vehicle. After approximately 30 minutes, the complainant was released.

The complainant filed a Form 1 Record of Complaint with the police department. The complaint was characterized as Public Trust and an investigation was launched into the officer's actions.

The final investigation report was forwarded to the Discipline Authority and the default of abuse of authority was substantiated. The respondent received a verbal reprimand with respect to his actions towards the complainant. The Office of the Police Complaint Commissioner concurred with the recommendations and conclusions of the investigator and Discipline Authority.

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❖ ***File No. 2256 – Public Trust***
Default: Abuse of Authority

The complainant and his friend were at a house party. The complainant's friend stepped out of the house and walked outside when the respondent officer approached the friend and asked how much he had to drink. The friend replied that he had a lot to drink. The complainant's friend was placed in the back of the officer's vehicle. The complainant then walked outside looking for his friend because he had called a cab. The police officer advised that his friend was placed in the back of the police vehicle, and he was asked how much he had to drink. The complainant replied that he had had two beers and he was escorted into the back of the vehicle. The complainant felt that the officer used excessive force and that he and his friend should not have been placed in the drunk tank when they were waiting to take a cab home.

The complainant filed a Record of Complaint with the Office of the Police Complaint Commissioner and the complaint was classified as Public Trust. The respondent officer and the complainant both agreed to meet and attempt to informally resolve the complaint. The parties had an opportunity to explain why they had each reacted in the manner that they did and the complaint was successfully informally resolved.

The Office of the Police Complaint Commissioner reviewed the file and agreed informal resolution was an appropriate disposition to the complaint.

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❖ ***File Nos. 1645 - Public Trust***
Default: Abuse of Authority

The complainant alleged that he was a victim of a minor assault committed by the respondent officer while the complainant was in custody for causing a disturbance. The complainant described the officer as having placed his right hand on the complainant's left shoulder and his thumb into the complainant's larynx cavity, applying pressure. The complainant claimed that the assault occurred in a cellblock interview room and was witnessed by another police officer.

A file was opened with the Office of the Police Complaint Commissioner, and an investigation ensued. Following an investigation, the Discipline Authority determined that the allegation of misconduct against the respondent officer could not be substantiated and accordingly dismissed the complaint.

A couple of months later new information came to the attention of the investigator, which if it had been made available to the Disciplinary Authority, could very well have affected the outcome of the complaint.

As a result of reviewing this new information, the Discipline Authority set aside his earlier decision and determined that the respondent officer had indeed committed the disciplinary default of abuse of authority, contrary to Section 10 of the *Code of Professional Conduct*.

The Discipline Authority determined that the Police Act required the least onerous disciplinary or corrective measures in relation to the police officer concerned. Therefore, he decided corrective measures would be appropriate and directed that the respondent be advised as to his future conduct and that he receive additional training in Force Options Theory.

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❖ ***File No. 1741 – Public Trust***
Default: Discreditable Conduct

The Internal Investigation Section of the department involved had been asked by the Driving Review Board to investigate a driving pursuit involving two members. It was alleged that a Crime Surveillance Team had located a stolen vehicle parked on a street. Patrol members had moved in to stop the vehicle when the suspects had returned to their car. The suspects attempted to flee and the police rammed their car at least four times. During the 30-second pursuit, two police vehicles, the suspect's vehicle and four private vehicles were damaged. One bystander was slightly injured.

The matter was brought to the attention of the Office of the Police Complaint Commissioner and a file was opened. As well, an Order for Investigation was issued from the Office of the Police Complaint Commissioner and the matter was characterized as Public Trust. After the Internal Investigation Section completed its investigation, it was determined that the respondents were hardworking and highly motivated police officers. It was their over zealous determination as police officers to apprehend these criminals and not a blatant disregard for regulations that lead them to conduct themselves as they did during this pursuit.

These mitigating circumstances determined that management advice was the appropriate action to take instead of more serious sanctions. The management advice given pertained to complying with Section 24.10 of the Regulation and Procedure Manual and the Emergency Vehicle Operation Regulation. The respondents were also directed to complete remedial training in pursuit driving policy and procedures.

Comparison Statistics

Files Opened

	2004	2003	2002[1]	2001	2000	1999[1]
Abbotsford	19	20	17	21	12	34
Central Saanich	2	8	6	7	5	1
CSFEU[2]	1	0	N/A	N/A	N/A	N/A
Delta	8	18	20	10	15	17
Esquimalt[3]	0	0	14	17	21	12
Kitasoo Xaixasi	0	0	0	0	0	N/A
Nelson	7	6	8	4	5	6
New Westminster	22	27	19	15	15	24
Oak Bay	1	1	4	5	11	4
Port Moody	4	5	2	3	4	2
Saanich	21	28	25	40	36	31
Stl'atl'imx	0	0	2	1	2	N/A
Vancouver	182	237	204	148	173	198
Victoria[3]	93	96	77	73	73	87
West Vancouver	12	10	9	12	27	13
TOTAL:	**372**	**456**	**407**	**356**	**399**	**429**

Files Closed

	2004	2003	2002	2001	2000	1999[1]
Abbotsford	20	17	16	17	38	13
Central Saanich	7	4	9	4	3	1
CSFEU[2]	0	0	0	N/A	N/A	N/A
Delta	10	18	15	13	16	11
Esquimalt[3]	1	8	12	16	17	12
Kitasoo Xaixasi	0	0	0	0	0	N/A
Nelson	2	9	3	6	6	8
New Westminster	21	17	16	20	15	21
Oak Bay	1	2	2	11	5	3
Port Moody	6	2	3	2	3	3
Saanich	17	32	26	46	35	18
Stl'atl'imx	0	0	3	2	0	N/A
Vancouver	209	145	197	132	202	156
Victoria[3]	89	101	68	73	77	53
West Vancouver	10	11	9	13	22	15
TOTAL:	**393**	**366**	**379**	**355**	**439**	**314**

1 The OPCC came into existence on July 1, 1998. Figures for 1998 represent complaints opened or closed from July 1st to December 31st, 1998.

2 As of December 3rd, 2002, complaints regarding municipal members of the Combined Forces Special Enforcement Unit fall within the mandate of the OPCC.

3 As of January 1st, 2003, Esquimalt Police Department was formally amalgamated with the Victoria Police Department

Files Opened in 2004 by Characterization

	Opened	*Public Trust*	*Internal Discipline*	*Service Policy*	*Compound*	*Non Lodged*	*Not Char.*
Abbotsford	**19**	13	1	1	0	3	1
Central Saanich	**2**	1	1	0	0	0	0
CFSEU	**1**	1	0	0	0	0	0
Delta	**8**	5	0	1	1	0	1
Kitsasoo Xaixasi	**0**	0	0	0	0	0	0
Nelson	**7**	7	0	0	0	0	0
New Westminster	**22**	20	0	0	0	1	1
Oak Bay	**1**	1	0	0	0	0	0
Port Moody	**4**	3	0	0	0	1	0
Saanich	**21**	17	1	0	1	0	2
Stl'atl imx	**0**	0	0	0	0	0	0
Vancouver	**182**	166	1	2	1	11	1
Victoria	**93**	87	0	0	0	2	4
West Vancouver	**12**	12	0	0	0	0	0
TOTAL	**372**	333	4	4	3	18	10

Every complaint that is recorded on a Form One Record of Complaint is required by section 52.1(1) of the *Police Act* to be characterized as one of three types:

- Public Trust
- Internal Discipline
- Service or Policy

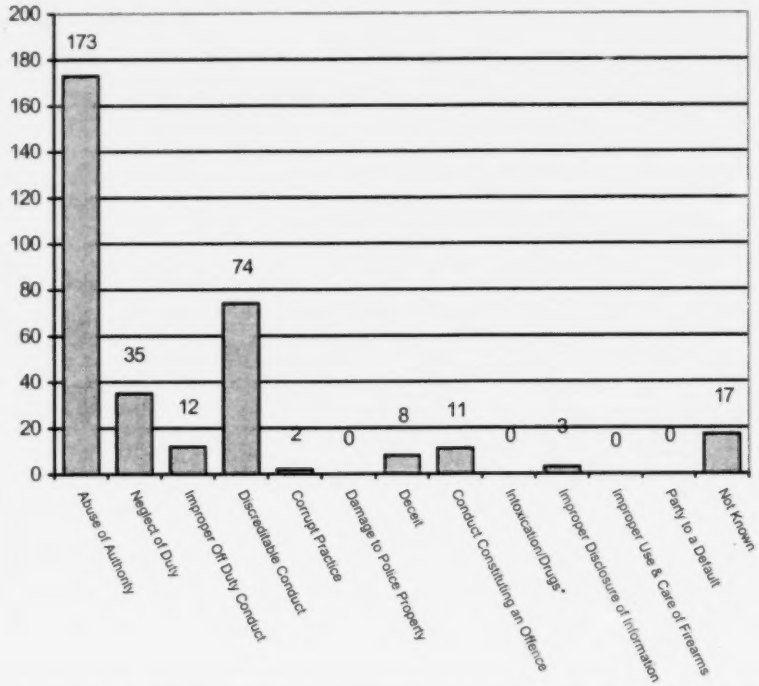
Compound complaints are complaints that have elements of one or more of the above.

Non-Lodged Complaints are letters of complaint where the complainant has chosen not to formally proceed under the *Police Act* by filing a Form One (or a Form One is pending)

Not Characterized refers to complaints that have not yet been characterized.

Complaints Opened in 2004 by Allegation

(Alleged defaults may or may not have been substantiated)



A complaint lodged against an officer may contain one or more allegations of a discipline default as defined by the *Code of Professional Conduct Regulations*, B.C. Reg. 205/98. The *Code* lists the following potential defaults:

- Discreditable conduct
- Neglect of duty
- Deceit
- Improper disclosure of information
- Corrupt practice
- Abuse of authority
- Improper use and care of firearms
- Damage to police property
- Misuse of intoxicating liquor or drugs in a manner prejudicial to duty
- Conduct constituting an offence
- Being a party to a disciplinary default
- Improper off-duty conduct

Disposition of Files Concluded in 2004

	A/W	*R&C*	*IR*	*SD*	*NS*	*Substantiated*		*Other*	***TOTAL***
						Corr/ Disc	*No Corr/Disc*		
Abbotsford	3	0	0	3	11	2	0	1	**20**
Central Saanich	0	0	0	0	6	1	0	0	**7**
CSFEU	0	0	0	0	0	0	0	0	**0**
Delta	1	0	0	4	4	1	0	0	**10**
Esquimalt	1	0	0	0	0	0	0	0	**1**
Kitasoo Xaixasi	0	0	0	0	0	0	0	0	**0**
Nelson	0	0	0	1	1	0	0	0	**2**
New Westminster	2	1	0	4	5	8	1	0	**21**
Oak Bay	0	0	1	0	0	0	0	0	**1**
Port Moody	0	2	0	1	3	0	0	0	**6**
Saanich	1	1	0	6	7	1	1	0	**17**
Stl'atl'imx	0	0	0	0	0	0	0	0	**0**
Vancouver	11	17	4	40	126	7	4	0	**209**
Victoria	16	2	32	29	8	1	0	1	**89**
West Vancouver	0	0	1	3	3	2	1	0	**10**
TOTAL	**35**	**23**	**38**	**91**	**174**	**23**	**7**	**2**	**393**

A/W Abandoned / Withdrawn

R&C Reviewed & Closed – For Service and Policy complaints and for non-lodged complaints. Upon receipt of the final response by the police board or department, the OPCC reviews and closes the file.

IR Informal Resolution

SD Summarily Dismissed – The Discipline Authority can summarily dismiss a complaint if: there is no likelihood further investigation would produce evidence of a default; the incident occurred more than 12 months prior to filing the complaint; or the complaint is frivolous or vexatious.

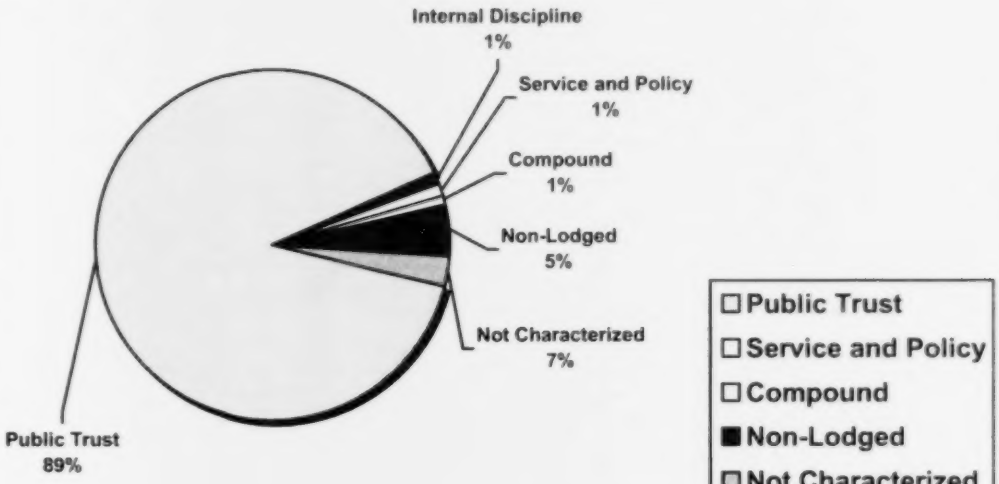
NS Not Substantiated – Following an investigation, the Discipline Authority determines there is no evidence to support the allegation of a default.

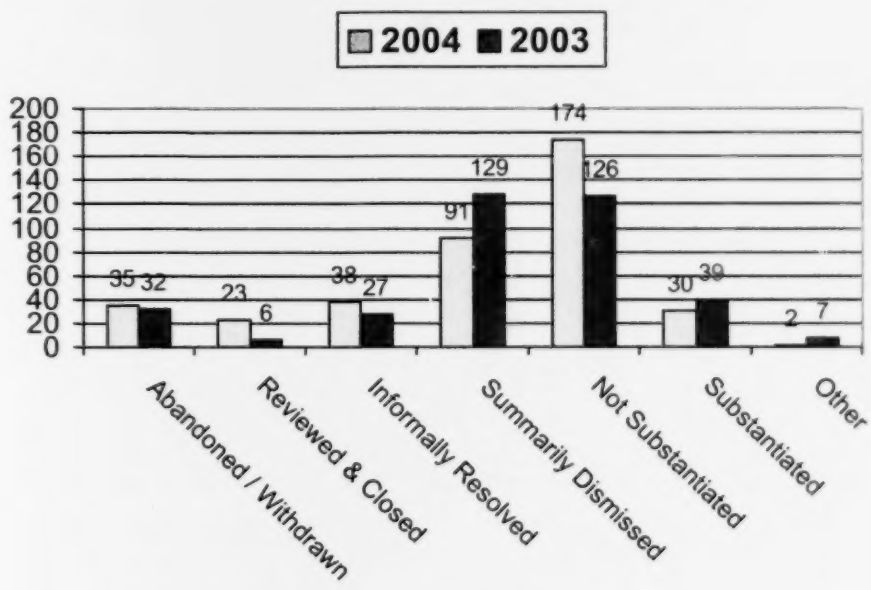
Corr/ Disc Substantiated – Following an investigation, the Discipline Authority determined the complaint was substantiated and ordered corrective or disciplinary measures.

No c/m Substantiated – Following an investigation, the Discipline Authority determined the complaint was substantiated, but that corrective or disciplinary measures are not warranted.

Other OPCC has no jurisdiction; or Officers retired/resigned

2004 Complaints by Comparison





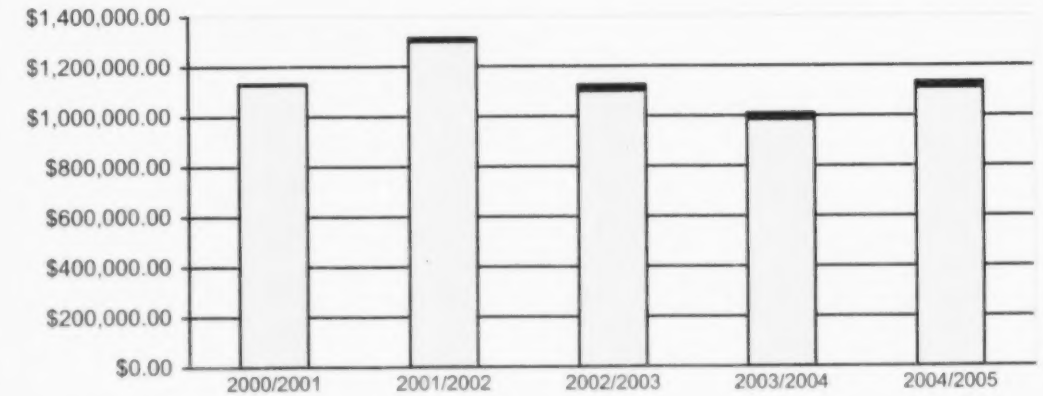
Budget

Fiscal Year ending March 31st, 2005

Number of Staff:	6 FTE's
Total Operating Budget:	$1,110,000.00[1]
Total Capital Budget:	$ 25,000.00
TOTAL:	**$1,135,000.00**

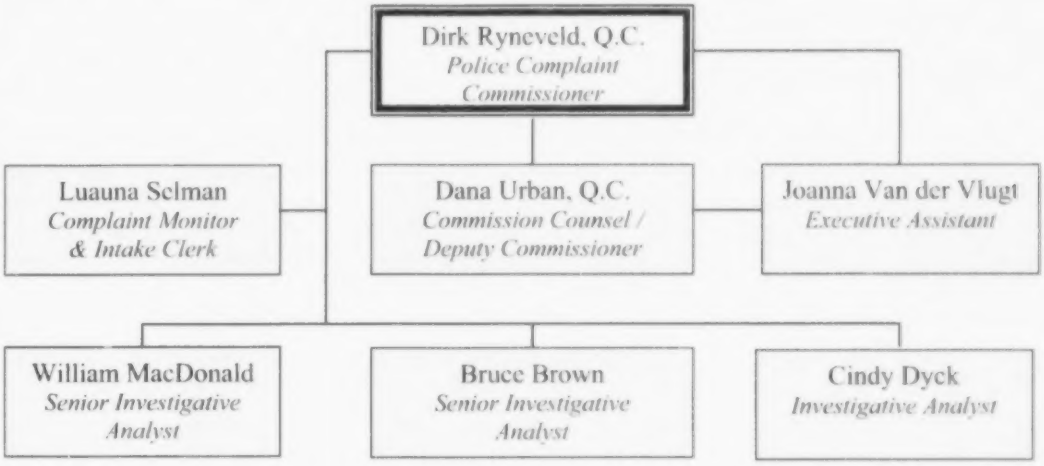
[1] This includes $105,000 supplementary funding and $20,000 from the Contingencies Vote.

Budgets 2000 to 2004



	2000/2001	2001/2002	2002/2003	2003/2004	2004/2005
■ Capital Budget	$6,000.00	$15,000.00	$25,000.00	$25,000.00	$25,000.00
□ Operating Budget	$1,127,000.00	$1,299,000.00	$1,101,000.00	$985,000.00	1,110,000.00
FTE's Allotted	9	11	11	9 (6 Filled)	6

Organization Chart



List of Support Groups

Section 54.1(9) and (10) of the *Police Act* states:

> *(9) In the informal resolution process, a complainant may enlist the assistance of a support person of the complainant's choice or may ask the Police Complaint Commissioner to appoint a support person for the complainant.*
>
> *(10) A support person, enlisted or appointed under subsection (9), may*
>
> *(a) be present at any interview about the complaint and at any mediation or informal resolution session, and*
> *(b) participate at any of those sessions with the consent of the respondent*

Section 54.1(8) of the Act requires the Police Complaint Commissioner to provide a list of support groups to help complainants with the informal resolution process. The following agencies have agreed to be listed as support groups for this purpose. Complainants are not limited to this list in choosing a support group or person.

Inter-Cultural Association of Greater Victoria

930 Balmoral Road
Victoria, BC V8T 1A8
Website: www.icavictoria.org

Telephone: (250) 388-4728
Fax: (250) 386-4395

British Columbia Civil Liberties Association

425 – 815 West Hastings Street
Vancouver, BC V6C 1B4
Website: www.bccla.org

Telephone: (604) 687-2929

S.U.C.C.E.S.S.

28 West Pender Street
Vancouver, BC V6B 1R6

Telephone: (604) 408-7238

Contact Names & Numbers

Office of the Police Complaint Commissioner:

Victoria Office
Third Floor, 756 Fort Street
PO Box 9895, Stn Prov Govt
Victoria, BC V8W 9T8
Tel: (250) 356-7458
Fax: (250) 356-6503
Website: www.opcc.bc.ca

Vancouver Office
320 – 1111 Melville Street
Vancouver, BC V6E 3V6
Tel: (604) 660-2385
Fax: (604) 660-1223

Toll free: Enquiry BC @ 1-800-663-7867

Municipal Police Agencies:

Abbotsford	(604) 859-5225
Central Saanich	(250) 652-4441
Delta	(604) 946-4411
Greater Vancouver Transportation Authority Police Service	(604) 515-8300
Kitasoo Xaixasi Police Service	(250) 839-1010
Nelson	(250) 354-3919
New Westminster	(604) 525-5411
Oak Bay	(250) 592-2424
Combined Forces Special Enforcement Unit	(604) 777-7800
Port Moody	(604) 461-3456
Saanich	(250) 475-4321
Stl'atl'imx Tribal Police	(250) 256-7784
Vancouver	(604) 717-3535
Victoria	(250) 995-7654
West Vancouver	(604) 925-7300

Complaints against the RCMP in British Columbia should be directed to:

Commission for Public Complaints Against the RCMP
7337 – 137 Street, Suite 102
Surrey, BC V3W 1A4
Tel: (604) 501-4080
Fax: (604) 501-4095
Toll free: 1-800-665-6878

Police Act Reform

White Paper
&
Draft *Police Complaint Act*

Dirk Ryneveld, Q.C.
Police Complaint Commissioner
British Columbia, Canada

June 2005

Introduction

In my Annual Report to the Legislature for 2003 (released March 2004), I called for the urgent reform of what is now Part 9 of the *Police Act*. I recently renewed that call for urgent legislative reform in my detailed report on the RCMP's external investigation of complaints brought forward by the Pivot Legal Society against members of the Vancouver Police Department. That Report vividly illustrates why the Legislature must act decisively to undertake statutory reforms in key areas, including a legislated duty of police officers to cooperate with investigations, if the civilian oversight process is to retain its legitimacy and credibility.[1] My 2003 Annual Report advised the Legislature of my intention to make separate representation to the House with draft legislation incorporating recommended amendments.

I am pleased to now submit for review by legislators a draft *Police Complaint Act* outlining a series of proposed reforms to Part 9. For ease of understanding the legislation has been drafted to articulate how Part 9 might read after incorporating amendments into a freestanding *Police Complaint Act*. This White Paper describes the major areas of proposed reform, with rationale for proposed changes.[2]

In March 2005, I distributed a courtesy draft of this White Paper to stakeholders and informed persons for their review and comment. Several comments have been received, and some parties have requested more time to comment. As the vast majority of comments received to date have not taken issue with the fundamentals of the proposals made herein, I am entirely confident submitting this document to the House for its review at this time. I have set a period for final written comment to expire on August 15th, following which I will prepare a supplementary report, which summarizes all key stakeholder comments on the White Paper and my response to them.[3]

I have embarked upon this reform process recognizing that the framers of Part 9 expected and invited reform. The Legislature wisely contemplated that if the excellent work of Justice Wally Oppal and Dr. John Hogarth was to be properly supported, Part 9 could not be frozen in time. To be effective and relevant on an ongoing basis, Part 9 would have to be subject to ongoing review based on experience. This is precisely why s. 51.2 mandated a comprehensive review of Part 9 by a special legislative committee within 3

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[1] Report of the Police Complaint Commissioner: Pivot Complaints Against VPD, June 2, 2005, see esp. pp. 6-31.

[2] This paper does not set out the rationale for housekeeping amendments or changes which, while not intended to alter meaning, are intended to simplify the drafting of certain sections (for example, the use of the word "commissioner" instead of "police complaint commissioner" each time that term is used in the Act). The rationale for such changes will usually be self-evident, but any reader identifying difficulties arising from such changes is encouraged to bring them to my attention.

[3] The one comment I have already incorporated as a change from the courtesy draft is a comment received from the Chief Judge of the Provincial Court, who persuaded me that despite the position of the Special Committee in 2002, it would likely be imprudent to expand the pool of public hearing adjudicators to include sitting judges (see footnote 47, *infra*).

years of its enactment (July 1, 1998), and why s. 50 confers on my office the power to engage in research, to review the administration of Part 9 and to issue reports for its improvement.[4]

Those familiar with the recent history of the *Police Act* will be aware that in 2001- 02, a Special Committee of the Legislature fulfilled its duty of reviewing Part 9. The Special Committee's work generated significant interest from the public, police organizations and other individuals, groups and informed persons. In my own review of those proceedings since I assumed this office in February 2003, I have been impressed by the calibre of most of the submissions made to the Special Committee, and by the Special Committee's Report and recommendations, issued in August 2002.

It is unfortunate that the Special Committee's recommendations have not yet been made a legislative priority. This reality does however provide an excellent opportunity to further update, refine and augment the Special Committee's recommendations regarding Part 9 of the *Police Act* based on the nearly 3 years of further experience and deliberation of this Office.

Principles

Four fundamental principles underlie the reforms proposed in the accompanying draft *Police Complaint Act* and described in this White Paper.

1 Civilian Oversight

The first is that there is an inextricable link between democracy, the rule of law and police accountability. Police serve a function that is vital to the proper operation of a free and democratic society. Police are rightly and necessarily given extensive powers. Police power is necessary to ensure that free people are protected and that their duly enacted laws are enforced. Police must be authorized to do things that would be illegal for ordinary citizens, and police must not be unduly fettered in the exercise of those powers. But the extensive power of police and the realities in which they exercise their power also means that everyone – the public *and* the police – must appreciate the critical importance of safeguarding proper standards of police conduct by civilian oversight of any complaints process in which police investigate police. Free and democratic societies must have effective civilian oversight processes for addressing allegations of individual or systemic breaches of proper police conduct. The processes for doing so must be fair to police officers, but they must also be effective in getting to the truth. Police accountability is as important for police as it is for the public.

[4] In embarking upon this reform process, I have engaged the services of Frank A.V. Falzon, Barrister and Solicitor, an experienced lawyer versed in administrative law, to assist in drafting the recommended changes to the existing legislation.

Police accountability is, in reality, a precondition to the grant of police powers. Fair-minded persons will not perceive police to be legitimate or credible without effective civilian oversight of any system where police are allowed to investigate police. As experience in other jurisdictions makes vividly clear, police credibility and legitimacy, once undermined, are extremely difficult to restore.

2 Legislative Foundation

The second precept that underlies this White Paper is that an effective process for handling public complaints requires a sound legislative foundation that enables the civilian overseer – in this province, the Police Complaint Commissioner - to effectively carry out his functions. Sound legislation goes hand in glove with the fair-mindedness, impartiality and good judgment by those responsible for administering legislation. As pointed out in a background paper on *Statutory Powers and Procedures* prepared for the Administrative Justice Project in 2002, even the best administration cannot transcend the problems arising from inadequate legislation:

> *Administrative tribunals should, as public service agencies, be spending as little time as possible resolving questions as to their substantive and procedural authority. Where such powers are inadequately or incompletely expressed, tribunals sometimes choose not to exercise those powers at all. On other occasions, they may resolve ambiguity by opting for more court-like solutions to problems, on the basis that they should play it safe. On other occasions, they may spend significant time at hearings, and in court, addressing jurisdictional arguments. They may, in the end, spend time and money seeking to resolve issues that might have been avoided had the legislator anticipated the issues and provided appropriate guidance.* [emphasis added][5]

My previous Annual Report, referred to at the outset, commented on this very problem:

> *One of the main obstacles to the effective performance of our duties lies with the inadequacies of the legislation governing our office. In my respectful view many of the problems encountered in the past five years can be avoided by amendments to Part 9 of the Police Act which will clarify jurisdictional issues. Too much time, energy, and scant financial resources have been spent arguing about the wording, intent and authorities provided for under the statute. One of my main objectives for 2004 will be make strong recommendations to the Legislature to urgently make much needed amendments to the statute in order for us to effectively carry out our mandate.*

[5] Falzon, *Statutory Powers and Procedures of Administrative Tribunals*, A Background Paper prepared for the Administrative Justice Project (2002) at p. 13.

Almost from the inception of this office, the police have challenged the Commissioner's authority to make certain decisions. The Hyatt case is but the first of a long series of cases where the complaint process has been delayed by legal challenges based on differing interpretations of certain sections of the statute. No criticism of the parties challenging the legislation is intended. They have the legal right to question ambiguities in the legislation. Nor am I criticizing the court process. Due process of law is important, but it is also inevitably slow and expensive. It may be trite to say that "justice delayed is justice denied", however it does not serve the complainants, the respondents or the public interest to have these matters drag on for years without resolution. What is at fault is the legislation itself. It is unclear, ambiguous and does not provide adequate remedies to the Office of the Police Complaint Commissioner to ensure effective civilian oversight.

3 Structural Independence of Commissioner

The third fundamental precept on which this White Paper is based is that the Police Complaint Commissioner's status as an officer of the Legislature is vital to the legitimacy and integrity of the complaint process. Justice Oppal's Commission of Inquiry properly recognized that the Commissioner's status as an officer of the Legislature must be a cornerstone of any system in which police are allowed to investigate the police:

There is a compelling need in this province for strong, independent civilian oversight of the police. Therefore, we have recommended the establishment of an office of a complaint commissioner operating at the level of an ombudsperson who would have complete authority to oversee all investigations, which would be conducted by the police. In the event that the complaint commissioner found the investigation of an officer to be inadequate or flawed, he or she would have the authority to conduct a further investigation, either by the same investigators or by investigators chosen by the commissioner. In order to ensure accountability, the office of the commissioner must be vested with complete independence and the authority to conduct independent investigations if necessary....

The complaint commissioner must be completely independent and assume a quasi-judicial role. It is suggested that the commissioner be appointed by a unanimous recommendation of a special committee of the legislature and that he or she would report to the legislature. Such an appointment method would greatly enhance the public's perception of independence and fairness in the complaints process.[6]

My own experience as Commissioner has only confirmed how imperative it is for the civilian officer entrusted with overseeing the complaints process to appear to be, and to in fact be, independent from both the police and the Executive Branch of Government.

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[6] *Closing the Gap, Policing and the Community* (1994), Letter of Transmittal, pp. xxvii – xxviii. Justice Oppal's May 10, 2002 testimony before the Special Committee reiterated his position that Officer of the Legislature status was necessary given the nature of the office.

The need for structural independence from police is obvious. One cannot properly undertake civilian oversight of an institution as powerful as the police without being independent of those being reviewed.

What is sometimes overlooked, however, is the equally vital need for the Commissioner to be structurally independent from the Executive. This is so for two reasons. First, there is a clear connection between Government and municipal police, as made clear in the functions of the Director of Police Services (*Police Act*, Part 8) and the Solicitor General's power to prescribe training standards for police officers (*Police Act*, s. 10.1), which standards may come under scrutiny in a complaint.[7] Second, as necessarily implicit in Justice Oppal's recommendations, a Commissioner perceived to be subject to political influence in the method of his appointment, dismissal and resource allocation would lose legitimacy and credibility in the eyes of reasonable members of the public. This would undermine the entire statute. British Columbia would otherwise have to seriously consider turning to the Ontario model of a Special Investigation Unit. This is why, for Justice Oppal, the Commissioner's independence as an officer of the legislature was the *quid pro quo* for even allowing police to investigate themselves. In this context, it is useful to be reminded of the special independence that arises from being an officer of the Legislature, which differs significantly from the situation of persons subject to appointment and dismissal by Cabinet:

- An officer of the legislature is appointed after a public process based on merit, upon unanimous recommendation of a committee of the legislature, which includes members of all political parties.

- An officer of the legislature cannot be removed except through a public process, through a public vote within the legislative assembly.

- An officer of the legislature does not report to or take political direction from any line Minister. The result for this office is insulation from the Ministry of Solicitor General which is politically responsible for certain policing issues and which may prescribe training standards that themselves may come into question in a complaint.[8] The Commissioner reports instead directly to Members of the Legislative Assembly through the Speaker of the House.

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[7] The present functions of the Director of Police Services amalgamated the previous powers of the Director with powers of the former Police Complaint Commission. Significantly, it was the Commission's former functions that led Justice Oppal to refer to "the perception of an alliance between municipal forces and the Police Commission" and "the potential for a conflict of interest where the cause of a citizen's complaint may be traced back ... to minimum recruiting or training standards": Report, Vol. 2, p. I-39.

[8] None of this assumes bad faith on the part of the Executive. It is life in politics. It is exactly why politicians with courage and foresight create checks and balances upon executive power, and why Officers of Legislature exist in special areas such as this. It is precisely why, when the present version of Part 9 was introduced in 1997, no political party challenged Justice Oppal's recommendation that the Commissioner be an Officer of the Legislature.

- As an officer of the legislature, the Commissioner's "rations and quarters" are determined by the Legislature rather than the Executive. Legislative committees, rather than Ministry staff operating under what is sometimes rigid political direction, are involved in determining its appropriate budget allocations: see *Select Standing Committee on Finance and Government Services, "Financial Review of Statutory Officers in British Columbia" (December, 2001).*

4 Regulatory Process

The fourth fundamental precept on which my proposals are based is that the police complaint process is not a criminal or quasi-judicial process in which a respondent officer is "charged", placed on "trial" and subject to a criminal proceeding. The police complaint process is a regulatory discipline process. As the Supreme Court of Canada made clear as long ago as 1987, the police discipline process is properly characterized as being protective and corrective. Its object is not to punish crime. Its object is to maintain discipline, professional integrity and professional standards, and thereby to protect the public interest.[9]

If the police complaint process is properly understood and characterized as a regulatory statute rather than a criminal statute, it follows that Part 9 should properly reflect the structure and features of modern regulatory statutes. To this end, it is in my view necessary to consider a broad range of legislative reforms to enhance the clarity, effectiveness and overall fairness of the complaint process. This includes, *inter alia*, ensuring that the Commissioner's jurisdiction is clear and effective in light of the realities in which this office operates, ensuring that the complaints process is accessible to the public and utilizes state of the art dispute resolution techniques, ensuring that unnecessary time is not taken processing clearly unmeritorious complaints, ensuring that meaningful investigative powers exist, ensuring that hearing processes are fair and effective and ensuring that witness and respondent officers are subject to the duty to cooperate fully with investigating officers, discipline authorities and public hearings. The regulatory model also invites reforms related to removing certain inflammatory language presently used to describe a range of discipline defaults, allowing the expungement of previous discipline defaults in accordance with proper regulatory principles, addressing the proper role of complainants at public hearings, and enabling the conduct of speedy "no fault" inquiries where it is considered appropriate to investigate important policy issues without finding disciplinary fault.

[9] See *R. v. Wigglesworth*, [1987] 2 S.C.R. 541; *Trumbley and Pugh v. Metropolitan Toronto Police Force*, [1987] 2 S.C.R. 577.

Recommended Proposals

Several significant reforms are necessary to ensure that the police complaint process properly addresses the four fundamental objectives outlined above. There are several possible ways in which to organize a discussion of these proposals. For present purposes, however, the simplest will be to describe the key changes that appear in each Part of the model statute. I conclude this Paper with an explanation as to why I believe these changes should be set out in a separate statute.

Part 1 – Introductory Provisions

➢ *Public Trust vs Internal Discipline*

The distinction between public trust complaints and internal discipline complaints is fundamental to the structure of Part 9. If a complaint is characterized as a public trust complaint, Division 4 sets out the code of procedure for investigating public trust complaints, the role of the discipline authority and the public hearing process. This code of procedure is not applicable if a complaint is characterized as an internal discipline complaint. For internal discipline complaints, the relevant procedures are established by each discipline authority, and the collective agreement process is operative.

Because public trust and internal discipline defaults both involve misconduct prohibited by the *Code of Professional Conduct Regulation* (which does not itself distinguish between the two types of complaints), public trust complaints do not always result in more serious consequences for a constable than internal discipline. However, the most serious allegations of misconduct typically meet the definition of public trust. From the respondent officer's point of view, the process that applies to a public trust investigation is preferred because it is more formal, and includes various rights including, rather surprisingly, the right not to be required to cooperate with an investigation.[10]

The BC Federation of Police Officers and the BC Civil Liberties Association have both advocated a clearer dividing line between public trust and internal discipline complaints. This is because the definition of internal discipline complaint allows for exceptions in which certain public trust complaints may be processed outside the public trust stream:

> "internal discipline complaint" means a complaint that relates to the acts, omissions or deportment of a respondent and that:
>
> (a) is not a public trust complaint, or

[10] This subject will be discussed in more detail below.

(b) is a public trust complaint that is not processed as a public trust complaint under Division 4.

A public trust complaint may fall within subsection (b) if:

- it was summarily dismissed: s. 64(5)(a);
- it was made orally or was not lodged: ss. 52(4) and 64(5)(b)(ii)
- it was lodged but the complainant withdrew it and the discipline authority chose to stand down the Division 4 process: s. 64(5)(b)(iii)
- it was made in confidence: 65.1(6).

The Union position is that there is no justification for treating any complaint meeting the definition of "public trust" as an internal discipline matter. It says that issues of police misconduct that affect the public should be dealt with in the public trust stream, regardless of how those issues come to light.[11] Dr. John Hogarth, who was very involved in drafting the present legislation, argued strongly before the Special Committee that while the Unions' proposal would serve the self-interest of Union members, it would remove necessary flexibility under the Act.[12] The Special Committee did not comment on this issue one way or the other. In my view, it ought to be addressed.

As reflected in the proposed wording of "internal discipline complaint" and the proposed consequential amendments to what are presently ss. 52, 64 and 65.1 of the *Police Act*, I agree that there ought to be a presumption that matters meeting the definition of public trust should be subject to the public trust process unless the commissioner orders otherwise. My proposal would eliminate the present "categories" approach and place the onus on a discipline authority to persuade the commissioner that the public trust process is not appropriate in particular circumstances.

At the same time, my proposal for a disciplined discretion to allow for exceptions reflects my agreement with Dr. Hogarth's position before the Special Committee that it would be overly rigid, legalistic and costly to treat public trust and internal discipline as if they were watertight compartments. While many examples can be given to illustrate the point, one may consider the example of an oral complaint that a constable spoke rudely and inappropriately to a person in front of their children during a stop at a road check. Depending on the tenor and content of such remarks, reasonable persons might debate whether such a complaint was a matter of "public

[11] March 20, 1998 and July 22, 1998 letters from John de Haas to Don Morrison. See also February 15, 2002 Joint Submission of Vancouver Police Union, BC Federation of Police Officers and Vancouver Police Officers' Association to Special Committee, pp. 14-26.

[12] Testimony of Dr. John Hogarth, January 21, 2002.

trust" or "internal discipline". Depending on the circumstances, the commissioner might well properly agree to allow the discipline authority to treat such a matter outside the public trust stream, particularly if the conduct was not part of a pattern of behaviour.

➢ *Clarifying the Act's Application to Officers.*

The *Police Act* complaint process is presently drafted as being applicable to municipal constables appointed under section 26 of the *Police Act*. As was discussed before the Special Committee, a compelling case can be made that the police complaint process should also apply to other classes of provincially-appointed officers.[13] The difficulty is that section 1 of the *Police Act* recognizes many different classes of officers, as reflected in the definitions of "municipal constable", "auxiliary constable", "bylaw enforcement officer", "designated law enforcement unit", "designated policing unit", "officer", "provincial constable", "special municipal constable" and "special provincial constable". The precise distinction between some of these definitions is not entirely clear. What is clear is the anomaly that exists where there is no public complaint process available, especially given a functional analysis of the duties of many of these classes of officers.

While section 74(2)(q) of the present *Police Act* provides a power to make regulations extending Part 9 to other classes of officers, legal issues arise as to whether this regulation-making power can overcome Part 9's repeated reference to "municipal constable". In my view there should be a clearer legal mechanism to extend the complaint process to other classes of officers, and to do so consistently without creating further jurisdictional complications in light of the rather limited wording in other sections of Part 9. I have therefore proposed more flexible definitions of "officer" and respondent" which - together with consequential amendments reflected in proposed ss. 15, 25(3), 27(1), 30, 44(3) and (7), 45(1), 47(1), 48 and 55(2) – would allow for a consistent application of the complaint process to any person identified by Cabinet as an "officer".

➢ *Purpose Clause and Interpretation Provisions*

I agree with Professor Stenning[14] that the interpretation and administration of the complaint process would be greatly assisted by the presence of a purpose clause outlining its purposes. Such a statement – proposed in ss. 2(1) and (2) of the attached draft – would ensure that the public, the police, the commissioner and the courts have

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[13] See March 12, 2002 testimony of Kevin Begg before the Special Committee.

[14] Stenning, *Review of Part 9 (Complaint Procedure) of the British Columbia Police Act* (August, 1998), at p. 4.

a common point of reference regarding the fundamental objectives of the complaint process.

Part 2 – Police Complaint Commissioner

➢ *Appointment, Term of Office, Remuneration, Pension, Removal*

Draft ss. 3-7 propose provisions on these subjects that are more consistent with those in the *Ombudsman Act*.[15]

➢ *Acting Commissioner*

Section 8(1)(d) would empower the Lieutenant Governor in Council to appoint an acting commissioner after a temporary absence of more than 90 days, rather than present 30 days.

➢ *Powers and duties*

Section 9 of the attached draft is intended to directly address and clarify the jurisdiction of the commissioner as the independent civilian oversight agency. The most important of these provisions are as follows:

(i) *Remove ambiguous guidelines power in ss. 50(2)(j) and 50(3)(d) and replace with power to issue binding directives:* see ss. 9(6)-(9) of attached draft.[16] Directives would address matters ranging from the duties of persons receiving complaints to the protocols, practices and procedures to be followed by investigating officers in connection with the collection of evidence or the taking of statements of witness officers and respondent officers.[17]

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[15] The Special Committee (Report, pp. 15-16) recommended one renewable four-year term. The present draft proposes one renewable six year term, six years being the standard term of office of legislative officers.

[16] This proposal would address the concerns raised by witnesses before the Special Committee regarding the legal status of the guidelines, and address the Special Committee's recommendation that the Commissioner be required to prepare guidelines regarding the procedures to be followed by a person receiving a complaint (Report, p. 8).

[17] For example, on this latter issue most members of the public would likely assume that when a serious incident takes place in which a police officer causes death or serious injury to a civilian, protocols are in place akin to those in regular investigations, whereby the officer is questioned promptly, and steps are taken to avoid advertent or inadvertent collaboration between officers present at the scene. However, the experience of this office has been that on too many occasions, protocols on such basic investigative matters are either lacking or not followed.

(ii) *Create obligation to develop and implement community outreach program to educate the public about the complaints process*: Draft s. 9(2)(e) addresses this recommendation of the Special Committee.[18]

(iii) *Clarify the commissioner's power to disclose information in his possession, in edited or unedited form, and on such terms and conditions as the commissioner considers appropriate to carry out the Act's purposes*: see s. 9(3)(g) of the attached draft.

(iv) *Add express power for commissioner to grant extensions of time*: see s. 9(4) of the attached draft.

(v) *Add express powers for commissioner to authorize multiple complaints to be processed as one complaint, and for investigations to proceed where a respondent officer cannot be identified*: See draft ss. 9(10)-(11). These provisions are intended to clarify the jurisdiction to effectively address multi-complainant and multi-respondent events, such as the "riot at the Hyatt".[19]

(vi) *Empower Commissioner to replace discipline authority with external discipline authority in exceptional circumstances*: Draft ss. 9(13). Like the existing power to order an external investigation, this power is designed to be exercised with restraint, and to address situations where a discipline authority, by his or her actions, statements or connections with an individual, is reasonably perceived as being incapable of making a fair and impartial decision.

(vii) *Express power to delegate*: Draft s. 10(4) would make express the commissioner's jurisdiction to delegate the exercise of certain powers to the deputy commissioner or other members of the commissioner's staff.

(viii) *Privilege, confidentiality, immunity:* Draft ss. 11 and 13 would confer upon the commissioner's office the confidentiality and privilege protections that are customary in regulatory statutes and statutes governing legislative officers. A specific provision has also been proposed (see s. 11(3)) to prevent litigants engaged in civil litigation to which the commissioner is not a party from

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[18] Special Committee Report, pp. 8, 15.

[19] The jurisdiction to investigate the complainants arising from the Hyatt incident resulted in extensive and costly litigation (see *Vancouver (City) Police Department v. British Columbia (Police Complaint Commissioner)*, [2000] B.C.J. No. 1773 (S.C.); appeal allowed, [2001] B.C.J. No. 1405 (C.A.); leave to appeal to S.C.C. granted [2001] S.C.C.A. No. 504; motion to quash appeal granted May 5, 2003), all of which so bogged down the complaint process as to become a major factor in my decision to cancel the public hearing, which jurisdiction was itself required to be addressed in court because of ambiguities in the legislation: *British Columbia (Police Complaint Commissioner) v. Vancouver (City) Police Department*, [2003] B.C.J. No. 399 (S.C.). This reform was specifically raised by the Municipal Chiefs of Police before the Special Committee (Submission, pp. 9-10).

seeking to subpoena witnesses and records of the commissioner for their private litigation purposes.

(ix) *Duty to cooperate*: Draft s. 14 would impose upon police an enforceable statutory duty to cooperate with the commissioner and with any complaints investigation. It is possible that, despite the existence of similar provisions in other police complaint statutes, the drafters of Part 9 believed that cooperation would be automatic and universal, and that a legislated duty was therefore unnecessary. The commissioner's experience, and experience of external investigators who have reported to this office, has shown that regrettably, police officers sometimes seek to delay or altogether avoid their obligation to cooperate with an investigation, even if they are merely witness officers and despite directions from their superiors to cooperate. The effect is sometimes the obstruction or paralysis of a full and proper investigation. As will be discussed in greater detail below under the heading "compellability"[20], the duty to cooperate is a bedrock principle in any credible complaint process.[21] It is essential to ensure that police officers understand and carry out their duties respecting complaints and investigations and proposed section 14 has been drafted to this end.

Part 3 – Processing of Complaints

➢ *Making a Complaint*

Section 15 proposes to simplify and clarify the complaint process in the following respects:

(i) *Eliminate requirement for Form 1*: Draft ss. 15(2) and (3) would, as recommended by the Special Committee[22], make it sufficient to submit a complaint in writing with the necessary information, whether or not a formal "Form 1" has been "lodged".

(ii) *Expand points of contact for making a complaint*: Draft ss. 15(4)(d) would enable the commissioner to designate provincial, federal and local agencies throughout the province for the purpose of receiving complaints, recognizing that the commissioner has offices only in Victoria and Vancouver, and recognizing that many complainants feel intimidated filing their complaint at

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[20] See pp. 23-25, infra.

[21] It will be seen that I am inclined to agree with the written submission of the BC Civil Liberties Association before the Special Committee that: "As public servants, the BCCLA believes that police officers should have a legal duty to cooperate with investigator investigating a complaint under the *Police Act*" (p. 9).

[22] Special Committee Report, p. 10.

the local police station.[23] Draft ss. 15(5) and (7) would clarify the duties on the person receiving a complaint.

(iii) *Public complaints vs. police officer reports*: Draft s. 15(1) clarifies that this section intended to be a public complaints provision, while another section (draft s. 48) is intended to apply to complaints made by police officers, which give rise to different considerations, some of which relate to confidentiality and some of which relate to the impropriety of granting complaining officers "complainant" rights.

(iv) *Habitually groundless complaints*: Draft s. 15(8) would empower the commissioner to find, with reasons, that a person is a habitual maker of groundless complaints, and would provide that unless the commissioner orders otherwise, no further complaint from that person need be processed beyond forwarding it to the commissioner's office.

➢ *Characterizing a Complaint*

Draft s. 16(9) would improve efficiency by empowering the commissioner to order, with reasons, that a complaint be terminated prior to or during the characterization stage if it relates to matters outside the act or has no air of reality.

➢ *Withdrawal of Complaint*

Draft s. 17(10) makes cosmetic changes to existing s. 52.2(10), and is not intended to alter the meaning of that subsection.

➢ *Protection of Sensitive Law Enforcement Information*

Draft s. 18 is intended to address the legitimate concern expressed by the Organized Crime Agency before the Special Committee regarding the need for special protections respecting sensitive law enforcement information, including safeguards respecting the commissioner's own access to that information.[24]

Part 4 – Public Trust Complaints

➢ *Third Party Complainants*

Part 9 of the existing Act presently confers no procedural rights on third party complainants in respect of public trust complaints. The premise is that while any person should be able to lodge a complaint, complaints not personally affected by

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[23] This reform was proposed by Professor Stenning, *supra*, note 11.

[24] See January 21, 2002 testimony of Organized Crime Agency; see also Special Committee Report, p. 17.

alleged public trust misconduct should not have any information rights or be allowed to participate in a public hearing. Professor Stenning and the BC Civil Liberties Association have argued that if third party complainants can make a complaint, they should have full rights to participate in the complaint process. In my view, an automatic right for third party complainants to participate in a complaint process already overseen by an active civilian oversight authority has the potential to add cost, prejudice to respondents and commission counsel, and even mischief to a fair and efficient complaint process. Experience has persuaded me, however, that there are situations where certain third party complainants, even if not "personally" affected by an incident, have a legitimate interest in a complaint and that their participation would not undermine the process, and might even increase confidence in it. The necessary balancing of interests can only be achieved through the exercise of discretion by the commissioner or by an adjudicator to confer procedural rights on such persons where good cause can be shown. This is the end to which ss. 19 and 20 have been drafted.

- *Resignation / Retirement / Transfer*

Draft section 21 is intended to clarify the jurisdiction to investigate misconduct alleged against officers who, since the event in question, have resigned, retired or transferred from one police service to another. This problem was brought to the Special Committee's attention, and has since been brought to the attention of this office on several occasions. Draft section 21 reflects my view that resignation, retirement or transfer should not be allowed to undermine the investigation of a legitimate complaint unless the commissioner orders otherwise.

- *Summary Dismissal*

Consistent with the intent of the Special Committee Report[25], draft s. 22(1) re-frames the grounds for summary dismissal in plainer language, which better tracks the experience under Part 9. Further, proposed section 22(7)(c) provides greater flexibility, so that a discipline authority can, after consultation with the commissioner's office or based on new information, independently reopen a summary dismissal decision without a formal order from the commissioner.

- *Informal Resolution*

(i) Draft ss. 23(15)-(17) would authorize the commissioner to order a complainant and respondent to attend mediation as a condition of the complaint process. While I agree that mandatory mediation is not appropriate

[25] Special Committee Report, p. 11.

for certain types of disputes, the great success of such programs in other contexts (including the success of my Quebec counterpart in instituting such a process)[26] has persuaded me of the many benefits – in terms of communication, satisfaction, efficiency and cost-effectiveness – that would attend such a reform, as recommended by the Special Committee.[27] The B.C. Association of Municipal Chiefs of Police advocated such a reform before the Special Committee, and Justice Oppal supported it in his testimony.[28]

(ii) Draft ss. 24(8)-(11) would require the terms of any informal resolution to be submitted to the commissioner. The resolution would be deemed to be conclusive unless the commissioner ordered to the contrary within 30 business days. The purpose of this amendment is to avoid the situation that has caused very serious problems and controversies in other jurisdictions where "back-room deals" were not reviewed and resulted in the suppression of police misconduct that ought to have been reviewed.[29]

(iii) Draft s. 23(17) would confirm that the costs of a dispute resolution process under subsections (5), (11) or (15) are to be paid by the municipality out of which the complaint arises. Information received by this office from jurisdictions that heavily rely on alternate dispute resolution in this context[30] emphasizes that the costs incurred in dispute resolution processes save enormous costs that would otherwise have been incurred at other stages of the complaint process.

➢ *Investigation*

A significant question arising during my deliberations has been whether to recommend that this Office receive the power in exceptional circumstances to conduct independent investigations. Such a power was recommended in the Oppal Commission Report, reinforced in Justice Oppal's testimony before the Special Committee[31], acknowledged as a legitimate option by at least one municipal police chief before the Special Committee[32] and proposed by me in my last Annual Report.

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[26] See May 10, 2002 testimony of Paul Monty before Special Committee.

[27] Special Committee Report, p. 9.

[28] B.C. Association of Municipal Chiefs of Police, Submission to Special Committee (January 2002), p. 5. See also testimony of Justice Wally Oppal, February 4, 2002.

[29] Stenning, note 11, *supra*, recommended this type of provision "to discourage the kind of 'backroom deals' which occurred within the Metropolitan Toronto Police in the Junger and Barbetta cases, both of which required the setting up of subsequent investigations and inquiries to bring them adequately to public attention and scrunity".

[30] For example, the Province of Quebec and the State of California

[31] See February 4, 2002 testimony of Justice Wally Oppal. See also May 1, 2002 testimony of Stephen Kelliher, Q.C.

[32] See May 8, 2002 testimony of Victoria City Police Chief, which accepted such a reform on the basis that independent investigation would be exceptional: "If the commissioner, after several tries, is not

I have over the past year had further opportunity to reflect on this question, and in this context I have considered the responsiveness and the quality of the external investigations I have ordered under section 55.1 of the *Act*. I can state without hesitation that I have been extremely satisfied with the responsiveness, expertise and quality of the external investigations conducted to date. This informs my present view that, on balance, my office does not need an independent power to investigate if the legislation is amended to: (a) create a formal duty in police officers to cooperate with internal and external investigators and (b) reinforce the duty of police departments and the provincial police force to conduct external investigations when ordered. Proposed section 26 addresses the latter objective, and at the same time consolidates into one place the disparate sections of the present *Police Act* which set out the Commissioner's power to order investigations: see *Police Act*, ss. 55(3), 55.1(2), 56.1(3). Proposed section 39(3) would also make clear that, once a public hearing has been arranged, commissioner's counsel may undertake such inquiries and investigations as considered necessary to properly perform his statutory function.

- *Administrative Search & Seizure*

Draft section 28 would confer upon an investigating officer the power to enter police premises, examine records and question officers, and the power to apply for a warrant to search off-premises. This provision is, like the duty to cooperate, intended to ensure the integrity of the investigation process, and was specifically recommended by the Chiefs of Police[33], supported by Justice Oppal[34], and recommended by the Special Committee.[35]

- *Reports During Investigations*

Draft s. 29 would impose a standard period of reporting every 45 days, replacing the requirement in s. 56(1) for a first report in 45 days, and reporting every 30 days thereafter.[36]

- *Reassignment Pending Investigation and Hearing*

Section 56.2 of the present *Police Act* states that if a discipline authority suspends an officer during an investigation, the suspension must be with pay, but the pay lasts only 30 days unless the relèvant police board takes the affirmative action of extending

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satisfied with the adequacy of an investigation, he could order it to another agency or actually have staff within his or her office do it."

[33] See B.C. Association of Municipal Chiefs of Police, Special Committee Submission, p. 9.

[34] See February 4, 2002 testimony of Justice Wally Oppal.

[35] Special Committee Report, p. 18.

[36] The Saanich Police Department (p. 20) recommended reporting every 60 days in view of the caseload of investigators. In my view, a 6 week reporting period more appropriately balances issues of caseload against the need for timely investigations.

the pay period. The Unions, supported by Professor Stenning on this point, rightly argue that this system can be unfair to officers given the time it usually takes (beyond 30 days) to investigate complaints. To remedy this problem, I have drafted proposed section 30(5) to require the payment period to continue unless and until the Police Board orders to the contrary.

➢ *Pre-Hearing Conferences*

Section 58 of the present *Police Act* provides that a resolution reached at a pre-hearing conference is final unless the commissioner orders a public hearing at the request of a complainant. Police officers are concerned that they might never know whether a matter is finally concluded, as there is presently no time limit on a complainant to make a request, and no time limit on the commissioner to decide whether to arrange a hearing in response to such a request. To address these concerns, I propose ss. 33(8)-(9), which impose a 30-day time limit on a complainant to make the public hearing request, and time limits on the commissioner to make a decision on such an application, subject to new evidence. To ensure that decisions regarding whether to offer a pre-hearing conference are not allowed to drift, I have also proposed a time limit on the time in which any pre-hearing conference must be offered, accepted and conducted: see draft s. 33(3).

➢ *Discipline Proceedings*

Existing sections 58.1 and 58.2 of the *Police Act* provide for the discipline authority to convene a discipline proceeding if an investigation reveals a potential default that is not otherwise resolved. The discipline process is intended to be a very summary proceeding, attended in most cases only by the respondent, the investigating officer and the discipline authority. The only records that may be used are the final investigation report, and the only witness that may be called is the investigating officer.

Some parties have questioned whether the discipline proceeding should be eliminated from the statutory process in favour of an immediate public hearing if the matter cannot be resolved consensually.[37] On the other hand, Professor Hogarth argued that it was highly inappropriate to remove from the complaints process the disciplinary function of the chief constable, who is responsible for those under his command.[38] I

[37] See for example July 22, 1998 letter from John de Haas to Don Morrison. It should be noted that the Unions' February 2002 submission to the Special Committee calls for the discipline process to be reformed rather than eliminated.

[38] See for example Saanich Police Department submission to Special Committee, at p. 21: "Some would argue that these messages coming from the Chief Constable would have more impact than from elsewhere in the department and may go further toward correcting the problem behaviour." Saanich does however

agree with Professor Hogarth that eliminating discipline proceedings would add that adding numerous public hearings to the present system, and that is simply not realistic either in respect of its effect on the chief constable, or in respect of the costs it would engender.

Rather than eliminate the discipline proceeding, I propose that the process be reformed. I propose the following reforms in draft sections 34 and 35:

(i) *Requirement for an external discipline authority to preside where internal DA has participated in pre-hearing conference process*: Draft s. 34(2) would enhance the effectiveness of the pre-hearing process (confidences would remain confidential) and the impartiality of the disciplinary proceeding (decision-maker untainted by pre-hearing discussions).

(ii) *Time limit for discipline hearing*: Draft s. 34(7) would require a discipline authority to convene a discipline hearing within 60 days from the date of receiving the final investigation report. At present, there is no time limit on the conduct of the discipline proceeding.

(iii) *Improve effectiveness of hearing by allowing respondent to give evidence and adduce other information*: Draft ss. 35(2)-(4) would retain the same parties as the present process, but make the hearing more effective by allowing additional records to be tendered, and allowing the respondent to give evidence and be questioned, as recommended by the Municipal Chiefs of Police.[39] This enhances the discipline authority's ability to reach the truth, and avoids the present situation in which the legislation appears to prohibit the discipline authority from considering other evidence.

(iv) *Clarify that a discipline authority is entitled to retain legal counsel*: Police chiefs raised the question whether the narrow wording of s. 59 allows them to retain legal counsel to assist them in ensuring that they make fair and lawful decisions. While such authority is in my view necessarily implicit in their function, I agree that it would assist to make this express: see draft s. 35(6).

(v) *Clarify discipline authority's power to adjourn a hearing pending further investigation*: As recommended by the Special Committee[40], draft s. 35(7) would make express the discipline authority's power to defer final decision pending a further investigation of particular facts if the discipline authority considers this necessary in order to reach a decision. This avoids a discipline authority being artificially limited to the information presented at the hearing.

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recommend its practice of insulating the chief constable from the process until the discipline proceeding is required.

[39] B.C. Association of Municipal Chiefs of Police, Special Committee Submission (January 2002), p. 10.

[40] Special Committee Report, p. 11.

(vi) Time limit for convening discipline proceeding.

➢ *Grounds for Public Hearing as of Right*

Draft 37(3) proposes to amend the present triggers for ordering a public hearing as of right. At present, s. 60(3) requires the commissioner to arrange a public hearing at the request of respondent for whom a mere written reprimand is imposed. As pointed out by witnesses at the special committee's hearings[41], this is too low a threshold for public hearings as of right. The reform proposed in draft s. 37(3) would limit public hearings as of right to proposed discipline that is serious, i.e., dismissal, reduction in rank or suspension without pay. In any other case, the commissioner would have to be persuaded that a public hearing is in the public interest.

➢ *Time Limit for Ordering Public Hearings*

Draft ss. 37(6) – (8) respond to concerns about finality for respondents, by imposing a time limit within which the commissioner should make public hearing orders.[42] Draft s. 37(10) would also impose an accountability requirement on the Commissioner to give reasons where a public hearing is refused, as recommended by the Special Committee.[43]

➢ *Information Where Public Hearing is Ordered*

Draft s. 37(9) would oblige the commissioner to provide public hearing participants with a document setting out the terms of reference for the public hearing.

➢ *Power to Withdraw Public Hearing*

Draft ss. 37(10) – (14) would make express the commissioner's power to withdraw a public hearing. These subsections also address the Special Committee's recommendation regarding the ability of respondents who have requested a public hearing as of right to withdraw their request.[44]

➢ *Public Hearing Procedure*

The public hearing process was the subject of significant comment before the special committee. Those comments, and the experience of this office in the public hearing process, have led me to propose the following in draft ss. 38 and 39:

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[41] See for example Saanich Police Department Submission, p. 14.

[42] See Unions' February 2002 submission to Special Committee at pp. 30-32, and Municipal Chiefs' January 2002 Submission, p. 9. This proposal was also adopted by the Special Committee, p. 12.

[43] See also BC Civil Liberties Association Submission to Special Committee, December 17, 2001, p. 12.

[44] Special Committee Report, p. 12.

(i) *Pool of potential adjudicators and method of appointment*: Draft section 38(2) proposes two amendments. The first, which was supported by the Special Committee, would codify the existing practice of having adjudicators appointed by the chief judge or chief justice..[45] A second amendment is also proposed (see draft ss. 38(5)-(6)), which addresses the situation where an adjudicator is unable to continue with a public hearing.[46]

(ii) *Commissioner's Counsel*: Draft s. 39(1) would clarify that commissioner's counsel is a person appointed and instructed by the commissioner, and that the commissioner may appear personally before the adjudicator.

(iii) *Public hearing procedure*: Draft s. 39(3) would grant adjudicators the express power to control their hearing and pre-hearing procedure, subject to any public hearing rules.

(iv) *Procedural rights of commissioner's counsel*: Draft s. 39(5) would clarify the right of commissioner's counsel to call and cross-examine any witness at a public hearing.

(v) *Procedural rights of respondents*: Draft s. 39(6) would clarify that the respondent is also entitled to the full bundle of procedural rights at a public hearing.

(vi) *Procedural rights of complainants*: Draft ss. 39(7)-(9) would clarify that complainants have a right to make oral or written submissions after all the evidence is called, but that they may participate in the evidentiary portion of the hearing only if the public hearing Adjudicator determines it to be necessary to ascertain the truth.

In making this proposal, I appreciate that informed observers[47] have expressed support for granting complainants evidentiary rights at public hearings that are co-extensive with those of commission counsel and respondents. While I have accorded those views significant weight, I am inclined to Professor Hogarth's view, expressed at the Special Committee[48], that full evidentiary

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[45] Special Committee Report, p. 16.

[46] I would note that the courtesy copy of this White Paper released to stakeholders in March 2005 included a third proposed change, to expand the pool of potential adjudicators to include sitting judges and justices, as had been recommended by the Special Committee. On April 20, 2005, I received a letter from the Chief Judge of the Provincial Court expressing concern about this proposal, and stating *inter alia* that "having sitting members of the Court assume what is essentially a disciplinary role in relation to a body whose members appear daily in these Courts is not the most desirable model for the preservation of impartiality and the appropriate separation of powers". Upon reflection, I find myself in agreement with this view.

[47] For example, Professor Stenning, the BC Civil Liberties Association and, in personal comments made in a recent decision, Justice Stromberg-Stein in *Berg v. Ryneveld*, 2004 BCSC 1685.

[48] Testimony of Dr. John Hogarth, January 21, 2002

participation as of right would be undesirable. I have arrived at this conclusion for several reasons.

First, the legislation properly confers on commissioner's counsel the role of making the case against the respondent. This difficult function requires careful preparation and strategic thinking regarding what evidence to tender, what facts to agree to, what witnesses to call and how to approach cross-examination. In purely functional terms, I am not persuaded that the automatic participation of complainants in the evidentiary phase of the public hearing process would improve public hearings in making the case or getting to the truth, particularly now that the role of commissioner's counsel is being clarified.[49]

Second, it is my frank view that the introduction of one or more complainants into this evidentiary process, some of whom will be represented and others of whom will not, runs a significant risk of undermining my counsel's ability to effectively exercise his difficult task, and depending on the conduct of certain complainants, may even impact on the procedural fairness of such hearings.

Third, I have not been persuaded that the automatic and full participation of complainants is necessary from a rights perspective. Complainants and respondents at public hearings are not in equivalent positions. A public hearing is not a civil tort case. Nor is it a form of human rights hearing where the focus is on compensating the victim. A public hearing is a regulatory discipline hearing where the respondent's conduct is the focus, and where the respondent is the person in greatest jeopardy. Thus, while a respondent should be entitled to full procedural rights, the case for equal rights for complainants is not as clear in this process.

Fourth, I do not believe that the full participation of complainants as of right accords with the regulatory / discipline model described in the preamble to this paper. The vast majority of professional regulatory proceedings limit their discipline hearings to the member and the "prosecuting" counsel. The role of complainants in public hearings is already greater than that they would enjoy in those other contexts.

Fifth, regard must be had to the very practical reality that public hearings can be expensive and time-consuming. The introduction of one or more complainants into the public hearing process would add significantly to the already considerable time and expense involved in these proceedings. While I appreciate that this is the present situation under the *RCMP Act*, I am not

[49] This is especially so since complainants with relevant evidence or information to give may provide that evidence to commission counsel, and may of course be called as witnesses to testify at the public hearing.

convinced that adopting the *RCMP Act* public hearing experience would be a positive addition to the BC statute.

Finally, it is important to be reminded that the hearings at issue are *public* hearings. The public nature of these hearings means that, subject to very limited exceptions, the public and media are able to attend and ensure that the process is accountable.

I wish to emphasize that all of the foregoing supports of my view that complainants should not enjoy an *automatic right of evidentiary participation*. First-party complainants would retain their existing right to make oral and written submissions after the evidence is called, a right I propose would be clarified to extend to making submissions on penalty, and all of which would also be made available to third party complainants in appropriate circumstances: see draft s. 20. In addition, I propose to add a new provision, which would respond to the Special Committee's recommendation on this point[50] and expressly extend the potential participation of complainants by allowing complainants to participate in the evidentiary process if a public hearing Adjudicator determines that such participation is necessary to ascertain the truth. Under this proposed reform, a complainant who can persuade the Adjudicator that their participation in the evidentiary phase is necessary would have those evidentiary rights the Adjudicator considers to be necessary and appropriate in the circumstances.[51]

(vii) *Power to order publication ban or proceed in camera*: Draft ss. 39(11) and (12) would codify the customary powers of all adjudicative bodies to ban publication or proceed *in camera* in exceptional circumstances. The drafting of these provisions recognizes that the exercise of any such power is now subject to well-established *Charter* principles.

(viii) *Requirement for "consequences" hearing*: Draft s. 39(14) would make express the requirement that an adjudicator must, following a finding of discipline default, hear submissions before pronouncing on whether to affirm, increase or reduce the disciplinary or corrective measures proposed by the discipline authority.

(ix) *Public hearing payment*: Draft s. 39(17) proposes that public hearing payment be made from the Consolidated Revenue Fund. The commissioner's office has no control over public hearings requested as of right. Although cost is a

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[50] Special Committee Report, p. 13.

[51] It should also be noted that, under this proposed amendment, the status of complainants would be greater than the status of intervenors on two levels. First, a complainant would be able to make submissions as of right, while an intervenor would require leave of the Adjudicator to do so: see draft s. 39(10). Second, unlike intervenors, a complainant would have the opportunity to make application to participate in the evidentiary portion of the hearing.

factor to be considered in deciding whether or not it is in the public interest to call a public hearing, the commissioner's discretion to call a public hearing should not be fettered or compromised by a lack of funds in the administrative budget. Rather than constantly revising budgets based on an unpredictable variable, it may be more sensible to assign public hearing costs to the Consolidated Revenue Fund.

(x) *Fitness assessment of respondents*: Draft ss. 39.1 would authorize an adjudicator to order that a fitness assessment be conducted in respect of a respondent where an issue arises as to whether the respondent is fit to participate in a public hearing.

(xi) *Compellability*: Draft s. 40 would reform what I regard to be the very unsatisfactory provisions in s. 61.1 of the *Police Act* under which respondents may not be compelled to testify, but may be subject to an adverse inference for failing to do so. The Saanich Police Department fairly posed the question raised by this provision as follows in their submission to the Special Committee:

> *Can police truly be accountable, and can departments endeavour to correct behaviour, if a respondent is not bound to testify? Is the concern for the right against self-incrimination greater than the right of the public to have a transparent and accountable police department and greater than the right of the department to ensure that the problem behaviour is corrected?*[52]

It is in my view inappropriate for respondent officers to be protected from the usual obligation to provide evidence in a regulatory discipline process. As made clear in the preamble to this White Paper, the police complaint process is not properly understood to be a quasi-criminal proceeding. It is an error to assume that respondents have, or that the process requires the respondent to have, the right to remain silent. The discipline process is a civil regulatory proceeding. As with other civil proceedings and modern regulatory statutes dealing with professional conduct, the obligation to respond promptly, fully and truthfully to allegations of misconduct is a legal and ethical duty properly attached to the privilege of being a professional.[53] This is so especially for police officers, who have a choice whether to become police officers, and who have a special duty to the truth and to the rule of law. It is inappropriate for respondent police officers to be able to avoid the truth by standing behind a legally authorized wall of silence.

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[52] Saanich Police Department Submission to Special Committee (2001), p. 22.

[53] See for example Law Society Rule 5-4, which allows hearing panels to compel lawyers to testify and produce records at disciplinary hearings, and see *Medical Practitioner's Act*, s. 69 and College and Physicians and Surgeons Rule 35.

It is no answer to assert that this would cause police to have "lesser rights" than the criminals they investigate. If a police officer is accused of a crime, the officer will have all the rights attendant on the criminal process. The police complaint process is not a criminal process, and so the proper comparison is not with criminals, but with other professionals who enjoy and protect the public trust.

Professor Lustgarten has correctly noted that the requirement to tell the truth is a necessary incident to the acute public interest in the proper conduct of members of the police.[54] The Australian Law Reform Commission has described the obligation to give evidence as "the perfectly natural consequence of membership in a disciplined force whose very duty is to uphold and enforce the law, if not of the quasi-employment relationship alone".[55] Professor Stenning has concluded that constitutional and legal parameters in which to draft such reforms are "quite permissive".[56]

The very existence of the adverse inference that "may" be drawn in s. 61.1(1) of the present *Act* reflects the drafters' own ambivalence about using a quasi-criminal model in the complaint process. Unfortunately (but not surprisingly), the "adverse inference" has been an entirely unsatisfactory substitute for a duty to cooperate. The circumstances in which it is appropriate to draw an adverse inference are not clear. It is seldom used. But even where an adverse inference can properly be drawn, an adverse inference is a far cry from the accountability that would be gained from an officer's statement regarding what happened.

The object of the complaints process, as with other civil or administrative processes, is to arrive at the truth and to deal with that truth in a statute designed to educate, correct and, where appropriate, to discipline. The wall of silence encouraged by s. 61.1 undermines that object. It is not unfair to require officers to tell the truth. Apart from serving the narrow self-interest of certain respondents whose interests might be incompatible with the truth, no valid rationale has been given to support it. The present section thus serves to create inefficiency and cost, and jeopardizes public confidence in the process. This is why, of all the reforms proposed in this paper, compellability is foundational.

The compellability of respondents should of course be limited to its purpose, i.e., the police complaint process. Evidence adduced in discipline proceedings should not be admissible in other administrative, civil or criminal proceedings.

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[54] Lustgarten, The Governance of the Police (Sweet & Maxwell, 1980) at p. 151.

[55] *Complaints Against Police*, Australian Law Reform Commission (1975), p. 244.

[56] Stenning, "Rights and Obligations of Police Officers Questioned in the Course of Investigations of Branches of Discipline and of Public Complaints: A Background Paper" (June 2000) at p. 9.

For this reason, I have proposed in subsections (4) and (5) a strong "use immunity" that would supplement other existing legal protections for the same purpose, and thus ensure that that the testimony of officers in the discipline process is not used against them in other proceedings.

(xii) *Right of appeal*: Proposed section 41 would clarify that the commissioner, the respondent or a complainant are the parties that may seek leave to appeal an adjudicator's decision on a question of law to the Court of Appeal.

Part 5 – Service or Policy Complaints

➢ *Reinforcing the Grievance Procedure*

Police boards and municipal police chiefs[57] advised the Special Committee that some police officers were seeking to invoke the service and policy complaint process in circumstances where the matter at issue was grievable under the collective agreement. I agree with the boards that this was not the intent of Part 5. For this reason, and as recommended by the Special Committee[58], I propose a provision – draft 42(4) – to address this concern.

➢ *Time Limits to Request Review of Service and Policy Conclusions*

As recommended by the Special Committee[59], draft ss. 43(6) – (8) have been amended to impose time limits on complainant requests and commissioner decisions respecting service and policy conclusions.

Part 6 – Internal Discipline Complaints

➢ *Public Trust Complaints Processed as Internal Discipline*

As noted above in the discussion of Part 1 and the definitions of "public trust" and "internal discipline", the proposal here (draft s. 44(8)) is to replace the present approach of allowing specific categories of "public trust" complaints to proceed by internal discipline, in favour of a discretion in the commissioner on application by a discipline authority.

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[57] See for example, B.C. Association of Municipal Chiefs of Police submission to Special Committee, p. 7, and see testimony of Vancouver Police Board before Special Committee (February 4, 2002).

[58] Special Committee Report, p. 13.

[59] Special Committee Report, p. 13.

Part 7 – General

➢ *Criminal Outcome Does Not Affect Application of Act*

Draft s. 46(3) proposes to make express that proceedings under this Act are not affected by the outcome of criminal proceedings.

➢ *Suspension of Discipline Proceedings During Criminal Proceedings*

Draft subs. 46(4)-(6) propose to clarify the provisions of s. 65(4) which address the suspension of the complaint process when criminal proceedings are extant.

➢ *Oral Complaints and Complaints Made in Confidence*

Draft s. 47 proposes a free-standing section addressed to oral complaints by the public, and provides a process whereby such complaints may be reduced to writing, even if the complainant does not wish to be identified. As recommended by the Special Committee[60], draft s. 48 proposes to specifically address misconduct reports made in confidence, including reports made by other officers.

➢ *Penalty for Harassment*

Section 65.2 of the *Police Act* currently prohibits harassment, retaliation or intimidation of any person making a complaint. As was pointed out to the Special Committee[61], no consequences are attached to this prohibition. Draft s. 49(2) proposes to add consequences by making it an offence to engage in such conduct.

➢ *Service Record of Discipline*

Section 65.3 of the *Police Act* presently requires that each municipal constable have a formal service record, and that the discipline authority keep this service record in a secure place separate from the personnel file. Before the Special Committee, many witnesses urged that provision be made to "expunge" disciplinary action from the service record in a fashion akin to a pardon that can be obtained from a criminal conviction. I do not accept the criminal "pardon" analogy used by some proponents of expungement, but I do agree that expungement can be consistent with a properly functioning regulatory discipline statute. The process offers constables an incentive

[60] Special Committee Report, p. 14.
[61] Stenning, note 11. See also BC Civil Liberties Association Submission, p. 6.

to restore a clean service record by applying to have certain defaults expunged after a certain period of time. Since it is obvious that serious defaults should never be expunged, the question becomes identifying which defaults may be expunged and under what schedule. In my view, the substance of this issue is appropriately dealt with by a regulation made by the Lieutenant Governor in Council. Consistent with the Special Committee's recommendation, I propose an amendment (draft ss. 50(4)-(6)) to ensure that all municipal departments act consistently, so that no service record be expunged except in accordance with such a regulation.[62] I would of course be pleased to consult with the Solicitor General's Ministry in respect of the substance and process that might inform a proper expungement regulation.[63]

- *No Fault Inquiry*

Draft section 53 proposes to add the innovation of a "no fault inquiry" to the legislation. Its fundamental purpose would be to provide for a speedy, no-fault review of police conduct in circumstances where the commissioner deems it appropriate in the public interest to review police actions, but considers it improper to identify a respondent or make findings of disciplinary default. Because the proposed inquiry is to operate on a no-fault basis, and is intended to produce recommendations of a preventative or remedial nature, the emphasis is on efficiency and timeliness. By imposing strict time limits and thus avoiding the complications that arise when officers have the right to appoint legal counsel, the proposed process would avoid the protracted and expensive disputes and litigation that often attend *Inquiry Act* proceedings. The creation of a no fault inquiry process would directly address the concern raised at page 5 of my previous Annual Report about the absence of an "alternative mechanism" to a public hearing where the commissioner where there is conduct that deserves review but not necessarily a public hearing.[64]

- *Privative Clause*

Draft s. 54 would add a privative clause to discourage litigation from decisions of the commissioner except where those decisions give rise to jurisdictional error or are otherwise patently unreasonable.

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[62] Special Committee Report, p. 17.

[63] For example, one option advanced in the submission of the Saanich Police Department as being in keeping with the purposes of the Act was to provide for the expungement of "corrective" measures, but not necessarily discipline measures (see pp. 11-13).

[64] The Saanich Police Department has recommended that: "The Act should provide for a public inquiry that does not identify respondent officers, and is not conducted with an intent to blame" (pp. 16-17). The idea also appears to find support in the B.C. Association of Municipal Police Chiefs' Submission to the Special Committee (p. 5).

- *Regulations*

Draft s. 55 would expand the Lieutenant Governor in Council's regulation-making power to include the following matters in addition those presently listed in s. 74 of the *Police Act*:

(i) *Rules Committee*: I propose a regulation providing for the creation of a rules committee, composed of the commissioner, a person who has acted as an adjudicator, a representative from the Government and a member of the public, to amend the present public hearing rules after any consultations they deem appropriate.[65] If my proposed revisions to the public hearing process are accepted, the public hearing rules would necessarily have to be revisited, and a rules committee would in my view be an excellent vehicle to undertake this review and thereby enhance the validity and legitimacy of the public hearing process.

(ii) *Expungement*: See discussion above (Part 7: General).

(iii) *Application of the complaint process to other classes of officers*: See discussion above (Part 1 – Introductory Provisions).

(iv) *Code of Conduct Regulation issues*: In my view, and consistent with the regulatory rather than a quasi-criminal nature of the statute, two important amendments should be made to the *Code of Professional Conduct Regulation*. The first is to amend the inflammatory language used to describe certain discipline defaults, so that the language better fits the conduct it embraces (discussed further below). The second is to provide a greater range of options for discipline, particularly as between the options of (a) suspending an officer without pay for 5 working days, and (b) reduction in rank or dismissal. I join those who find it very difficult to understand why, between those poles, discipline authorities and adjudicators have no middle ground of discipline to consider.

A Separate Statute

Convenience and ease of reference are part of the reason that the attached proposals have been drafted in the form of a separate statute. More fundamentally, however, this approach also reflects my view, expressed at page 6 of my last Annual Report, that a separate statute addressing the complaint process would be more consistent with the independence of this office and its relationship to the Legislature. As noted above, I

[65] Such consultations might for example include police chiefs, the police union, the Civil Liberties Association and members of the Bar familiar with the police complaint process.

believe I must remain conscious of my independence from the Solicitor General's Ministry since that Ministry is legally connected to police under other parts of the *Police Act*, and its actions could potentially arise for review in the complaints process.

I appreciate that our system of responsible government requires a Minister of the Crown to speak to amendments to any statute, and for this reason it is my view that the appropriate Minister to undertake that task, after receiving my recommendation for amendments through the Speaker of the Legislative Assembly, would be the Premier or the Attorney General. This having been said, I very much welcome the Solicitor General and his Ministry to comment on this White Paper before I produce a final set of recommendations to the Legislature.

Other Issues

While Parts I-IV above address proposed statutory changes to Part 9, there are other reform issues that are more properly addressed in regulation. It is my view that the most important of these is the recommendation of the Saanich Police Department to reform some of the strong pejorative language in which certain disciplinary defaults are expressed, such as "deceit" and "corrupt practice". As Saanich points out in several helpful examples[66], the problem is not that these are inappropriate terms for certain situations. The problem lies in the breadth of the conduct they encompass. If, as I have proposed, reform should reflect a proper regulatory discipline model, it is only fair and consistent that the use of terminology be more consistent with other professional conduct statutes, and that there be a better fit between conduct and the terms used to describe that conduct. While this is an issue for the Lieutenant Governor in Council to address by way of regulation, I would be more than pleased to offer my assistance in the drafting of appropriate provisions.

Dirk Ryneveld, Q.C.
Police Complaint Commissioner

Dated: June 7, 2005 at Victoria, British Columbia

[66] Saanich Police Department Submission to Special Committee, pp. 8-10.

DRAFT

POLICE COMPLAINT ACT

Part 1 – Introductory Provisions

Definitions

1. In this Act:

"adjudicator" means an adjudicator appointed under section 38;

"agent", in relation to a person who is a member of a trade union in which the majority of employees is engaged in police duties, means an individual of the person's choice and includes the trade union representative provided under the applicable collective agreement, but does not include counsel for the person;

"board" means,

(a) in relation to a municipal police department, a municipal police board,

(b) in relation to a designated policing unit, the designated board established for that designated policing unit, and

(c) in relation to a designated law enforcement unit, the designated board established for that designated law enforcement unit;

"business day" means a day other than a Saturday or a holiday;

"chief constable" means the chief constable of a municipal police department or other law enforcement agency designated by regulation.

"Code of Professional Conduct" means the prescribed code of conduct;

"commissioner" means the police complaint commissioner appointed under section 3(1) or 8(1), or the commissioner's delegate;

"complainant" means the person who submitted a complaint under section 15;

"complaint" means a complaint submitted under section 15 and includes a report made under section 46;

"complaint disposition" means the decision or resolution that concludes the complaint process under this Part and includes

(a) a final decision under section 22 (7) to summarily dismiss a complainant's complaint,

(b) an informal resolution that is final under section 24 (4),

(c) a disciplinary or corrective measure accepted by a respondent under section 33 (5),

(d) a disciplinary or corrective measure that is final under section 36 (4) (b), and

(e) a decision of an adjudicator under section 39 (16);

"conduct complaint" means an internal discipline complaint or a public trust complaint;

"discipline authority" means,

(a) in relation to a municipal constable against whom a conduct complaint is made, the chief constable of the municipal police department with which the respondent is employed, or a delegate of that chief constable,

(b) in relation to a chief constable or a deputy chief constable against whom a conduct complaint is made, the chair of the board by which the respondent is employed,

(c) in relation to any other officer against whom a conduct complaint is made, the person identified by regulation as the discipline authority for that officer or class of officer, or

(d) in relation to a municipal police department about which a complainant makes a complaint, the chair of the board that has authority over that police department.

"disciplinary default" means a breach of the Code of Professional Conduct;

"final investigation report" means the report provided by an investigating officer under section 29 (6);

"internal discipline complaint" means a complaint that relates to the acts, omissions or deportment of a respondent and that

(a) is not a public trust complaint, or

(b) is a public trust complaint that the commissioner, on application by a discipline authority under s. 44(8), orders may be processed as an internal discipline complaint.

"investigating officer" means the person who has conduct of an investigation of a complaint;

"municipal constable" means a constable appointed under section 26 of the Police Act;

"municipal police board" means a municipal police board established under section 23 of the Police Act;

"municipal police department" means a municipal police department established under section 26 of the Police Act;

"officer" or "police officer" means any police officer, constable, chief constable, deputy chief constable or other law enforcement officer or class of law enforcement officer to whom this Act applies in whole in part by regulation.

"public hearing" means a hearing arranged and set under sections 35 and 36;

"public trust complaint" means a complaint to the effect that a respondent has committed a public trust default;

"public trust default" means conduct that would, if proved, constitute a disciplinary default and that

(a) causes or has the potential to cause physical or emotional harm or financial loss to any person,

(b) violates any person's dignity, privacy or other rights recognized by law, or

(c) is likely to undermine public confidence in the police;

"respondent" means an officer against whom a complaint is made or an officer identified by the police complaint commissioner as a respondent under section 9 (13) of this Act, and includes a person who, under section 21, has resigned, retired or transferred since an incident that is the subject of a complaint or investigation under this Act.

"service or policy complaint" means a complaint to the effect that one or more of the following are inadequate or inappropriate for or in relation to the conduct of a municipal police department:

(a) its policies;

(b) its procedures;

(c) its standing orders;

(d) its supervision and management controls;

(e) its training programs and resources;

(f) its staffing;

(g) its resource allocation;

(h) its procedures or resources that are available to permit it to respond to requests for assistance;

(i) any other internal operational or procedural matter.

Purposes and Interpretation

2(1) The purposes of this Act are as follows:

(a) to maintain public confidence in the police by creating an effective legislative framework for handling complaints regarding the conduct of police officers and complaints regarding service and policy issues;

(b) to enable the commissioner, an officer of the Legislature, to operate as an independent, impartial and effective civilian authority to oversee and ensure that the police complaint process is credible and accountable;

(c) to establish a police complaint process that is fair to police officers, accessible to complainants, thorough and timely;

(d) to encourage the use of dispute resolution mechanisms to resolve complaints informally where possible and appropriate; and

(e) to create a fair and credible complaint system to educate, to correct and where appropriate, to discipline police officers who commit disciplinary defaults.

(2) This Act shall be construed in a fashion that best ensures that the police complaint process is effective and achieves the purposes listed in subsection (1).

Part 2 – Police Complaint Commissioner

Appointment of Police Complaint Commissioner

3(1) On the recommendation of the Legislative Assembly, the Lieutenant Governor must appoint as the commissioner a person, other than a member of the Legislative Assembly, to exercise the powers and perform the duties assigned to the commissioner under this Act.

(2) The Legislative Assembly must not recommend a person to be appointed commissioner unless a special committee of the Legislative Assembly has unanimously recommended to the Legislative Assembly that the person be appointed.

(3) The commissioner is an officer of the Legislature.

Term of office

4 The commissioner must be appointed for a 6 year term, and may be reappointed in the manner provided in section 3 for one further 6 year term.

Remuneration

5(1) The commissioner is entitled to be paid, out of the consolidated revenue fund, a salary equal to the salary paid to the chief judge of the Provincial Court.

(2) The commissioner must be reimbursed for reasonable travelling and out of pocket expenses necessarily incurred in discharging duties.

Pension

6(1) Subject to subsections (2) and (3), the Public Service Pension Plan, continued under the *Public Sector Pension Plans Act,* applies to the commissioner.

(2) When calculating the amount of a pension under the Public Service Pension Plan, each year of service as commissioner must be counted as 1 1/2 years of pensionable service.

(3) Despite the accrual of 35 years of pensionable service, contributions to the Public Service Pension Plan must continue for each additional year of service up to 35 years of contributory service.

Resignation, removal or suspension of police complaint commissioner

7(1) The commissioner may resign at any time by notifying the Speaker of the Legislative Assembly or, if there is no Speaker or the Speaker is absent from British Columbia, by notifying the Clerk of the Legislative Assembly.

(2) The Lieutenant Governor in Council must remove the commissioner from office or suspend the commissioner for cause or incapacity on the recommendation of 2/3 of the members present in the Legislative Assembly.

(3) If the Legislative Assembly is not sitting, the Lieutenant Governor in Council may suspend the commissioner for cause or incapacity.

Acting police complaint commissioner

8(1) The Lieutenant Governor in Council may appoint an acting commissioner if one of the following applies:

(a) the office of commissioner is or becomes vacant when the Legislative Assembly is not sitting;

(b) the commissioner is suspended when the Legislative Assembly is not sitting;

(c) the commissioner is removed or suspended or the office of the police complaint commissioner becomes vacant when the Legislative Assembly is sitting, but no recommendation is made by the Legislative Assembly under section 47 (1) before the end of the session;

(d) the police complaint commissioner will be temporarily absent for more than 90 days because of illness or any other reason.

(2) An acting police complaint commissioner holds office until the first of the following occurs:

(a) a person is appointed under section 3 (1);

(b) the suspension of the commissioner ends;

(c) the Legislative Assembly has sat for 20 days after the date of the acting police complaint commissioner's appointment;

(d) the commissioner returns to office after a temporary absence.

Powers and duties of police complaint commissioner

9(1) The commissioner is to oversee the effective handling of complaints and may exercise the other powers conferred by this Act.

(2) Without limiting subsection (1), the commissioner is to

(a) receive complaints from any source,

(b) establish and maintain a record of complaints, including the complaint dispositions relating to those complaints,

(c) compile statistical information respecting all complaints,

(d) regularly prepare reports of the complaint dispositions made or reached during the reporting period, and make those reports available to the public,

(e) develop an outreach program and inform the public of the complaint procedures provided by this Part and the functions and duties of the commissioner,

(f) accept and consider comments from any interested person respecting the administration of this Part,

(g) inform, advise and assist complainants, respondents, discipline authorities, boards and adjudicators respecting the complaint process and the handling of complaints,

(h) periodically conduct reviews of the complaint process and make any recommendations for improvement of that process in the annual report under section 12,

(i) establish procedures for mediation services to assist complainants and respondents in achieving informal resolution of complaints and provide those services to those parties,

(j) perform any other duties imposed and exercise any other powers provided by this Act.

(3) Without limiting subsection (1), the commissioner may do any of the following:

(a) prepare and provide informational reports on any matter related to the role of the police complaint commissioner;

(b) engage in or commission research on any matter relating to the purposes of this Part;

(c) make recommendations that a municipality, board or chief constable examine and reconsider any written policies or procedures that may have been a factor in an act or omission that gave rise to a complaint;

(d) make recommendations to the Director of Police Services or the Solicitor General that a review, study or audit be undertaken to assist police departments or forces, or any designated policing unit or designated law enforcement unit to which this Part is made applicable by regulation of the Lieutenant Governor in Council, in developing training or other programs designed to prevent recurrence of any problems revealed by the complaint process;

(e) make recommendations to the Lieutenant Governor in Council for a public inquiry under the *Inquiry Act* if there are reasonable grounds to believe that

(i) the issues in respect of which the inquiry is recommended are so serious or so widespread that an inquiry is necessary in the public interest,

(ii) an investigation conducted under this Part, even if followed by a public hearing, would be too limited in scope, and

(iii) powers granted under the *Inquiry Act* are needed;

(f) refer to Crown counsel a complaint, or one or more of the allegations in a complaint, for possible criminal prosecution;

(g) publish any decision of the commissioner in edited or unedited form, and disclose information in his possession to any person or the public, on such terms and conditions as the police complaint commissioner, in his discretion, considers appropriate to carry out the purposes of this Act.

(4) The commissioner may, before or after the time for the doing of anything authorized or required to be done under this Act, grant one or more extensions of time and where the matter is a public trust matter may, in his discretion, give any party to a complaint or investigation an opportunity to make submissions prior to making a decision under this subsection.

(5) In exercising the commissioner's powers and duties in relation to a public trust complaint, including a public hearing in relation to a public trust complaint, the commissioner or commissioner's counsel may gather and receive information from any person or source, including the parties and the discipline authority, in the manner the commissioner considers appropriate including, without limitation, interviewing and taking statements.

(6) The commissioner may issue binding directives to any person, other than an adjudicator, regarding the practices and procedures that person is required to follow pertaining to a matter covered by this Act.

(7) Without limiting the generality of subsection (6), the commissioner may issue binding directives:

(a) respecting the procedures to be followed by persons receiving a complaint;

(b) respecting the protocols, practices and procedures to be followed by investigating officers in connection with the collection of evidence or the taking of statements of witness officers and respondent officers;

(c) respecting the duties and responsibilities of officers where an external investigation has been ordered;

(d) respecting the procedure to be followed by discipline authorities in conducting discipline hearings;

(e) respecting the procedures to be followed for the purpose of informal resolution of public trust complaints.

(8) The failure by a police officer to comply with a practice directive under subsection (7) may be prescribed as a discipline default in the *Code of Conduct Regulation*.

(9) The commissioner may apply to the British Columbia Supreme Court for an order requiring a person to comply with a practice directive.

(10) Where an incident or event gives rise to several complaints by one or more complainants, the commissioner may authorize a discipline authority to process and investigate the matter as if it were a single complaint, subject to any terms and conditions specified by the commissioner.

(11) Where a complainant or the commissioner is unable to identify a respondent who was involved in a public trust incident, the commissioner may order that the incident be investigated as if a respondent had been named, and in such a case:

(a) the commissioner may issue a written notice describing the alleged public trust default;

(b) one or more respondents may be named by the commissioner at any point in the investigation on his own initiative or if the investigating officer advises the commissioner that he has reasonable grounds to believe that one or more identifiable officers was involved in the incident;

(c) any respondent so named is entitled to the rights granted in Part 4 commencing at the time he is named by the commissioner.

(12) Whether or not a complaint is submitted in writing and whether or not the complaint is made in confidence under section 47,

(a) the commissioner may inform Crown counsel of any allegation in the complaint that could constitute a criminal offence, and

(b) a municipal or provincial constable may investigate any allegation in a complaint that a criminal offence was or may have been committed.

(13) The commissioner may, at any time, order that the functions of a disciplinary authority be exercised by another chief or deputy chief constable where the commissioner is satisfied that the actions, statements or relationship of the proposed disciplinary authority to a respondent have so tainted the necessary perception of fairness and impartiality as to require an external discipline authority to be appointed.

Staff of police complaint commissioner

10(1) The commissioner may appoint, in accordance with the *Public Service Act*, employees necessary to enable the commissioner to perform the duties of the office.

(2) For the purpose of the application of the *Public Service Act* to subsection (1) of this section, the commissioner is deemed to be a deputy minister.

(3) The commissioner may appoint a deputy police complaint commissioner, who may carry out the functions of the police complaint commissioner while the police complaint commissioner is temporarily absent for a period of not more than 90 days because of illness or any other reason.

(4) The commissioner may delegate, subject to any terms and conditions the commissioner considers appropriate, any duty or power he may exercise under this Act to the deputy commissioner, and may delegate any duty or power to any other member of his staff except for the power to arrange a public hearing or order an investigation, subject to the terms and conditions the commissioner considers appropriate.

(5) The commissioner may incur reasonable office and other expenses as may be necessary to discharge functions under this Act.

(6) The commissioner may retain consultants, mediators or other persons as may be necessary to discharge functions under this Act, and may establish their remuneration and other terms and conditions of their retainers.

(7) The *Public Service Act* does not apply in respect of a person retained under subsection (6) of this section.

(8) The commissioner may make a special report to the Legislative Assembly if the commissioner considers that one or both of the following are inadequate for fulfilling the duties of the office:

(a) the amounts and establishment provided for the office of police complaint commissioner in the estimates;

(b) the services provided by the Public Service Employee Relations Commission.

Privilege and confidentiality

11(1) The commissioner, every staff member and every person retained by the commissioner under section 10 must not be required to testify or produce evidence in any administrative or court proceeding, other than a criminal proceeding or a proceeding before a special committee of the Legislative Assembly, about records or information obtained in the discharge of any power or duty under this Act.

(2) Subsection (1) does not abridge the commissioner's right to refuse in any proceeding to give evidence protected by solicitor-client privilege, and does not abridge counsel's duty not to disclose information protected by solicitor-client privilege without the written consent of the commissioner.

(3) Without limiting the generality of subsection (1), all records in the possession or control of the commissioner are exempt from the civil disclosure process set out in the British Columbia Rules of Court.

(4) Despite subsection (1) and despite anything in this Act:

(a) the court may require the commissioner to produce to the Supreme Court the record of a proceeding that is the subject of an application for judicial review under the *Judicial Review Procedure Act*,

(b) the commissioner may authorize commissioner's counsel to tender evidence in the counsel's possession to the parties and to an adjudicator for purposes of a public hearing under this Act,

(c) the commissioner may, in the commissioner's discretion and on any terms or conditions the commissioner considers appropriate, release to any person or to the public any information in his possession where he is satisfied that such disclosure is necessary in the public interest.

Annual report

12(1) The commissioner must report annually to the Speaker of the Legislative Assembly on the work of the police complaint commissioner's office.

(2) The Speaker must promptly lay each annual report before the Legislative Assembly if it is in session and, if the Legislative Assembly is not in session when the report is submitted, within 15 days after the beginning of the next session.

Immunity

13(1) Subject to subsection (2), no cause of action exists and no legal proceeding for damages lies or may be commenced or maintained against the commissioner, his employees, agents or any person acting under his direction because of anything done or omitted:

(a) in the performance or intended performance of any duty under this Act or the tribunal's enabling Act, or

(b) in the exercise or intended exercise of any power under this Act or the tribunal's enabling Act.

(3) Subsection (2) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.

Duty to cooperate

14(1) Every police officer has a duty to cooperate fully with the commissioner and with any investigation under this Act.

(2) Without limiting the generality of subsection (1), the duty of cooperation includes:

(a) prompt compliance with any written request by the commissioner for any physical or electronic record, information or thing in that person's possession, custody or control;

(b) making and preserving duty reports in accordance with directives issued by the commissioner, and promptly providing those reports upon written request of an investigator, discipline authority, adjudicator or the commissioner; and

(c) where a public hearing has been arranged, attending before commissioner's counsel for an interview at the time and place directed by the commissioner if the officer is not the public hearing respondent.

(3) A police officer who fails to comply with subsection (1) commits the discipline default of neglect of duty.

(4) The failure or refusal of a police officer to comply with a direction or request issued under this section makes the officer, on application to British Columbia Supreme Court by the commissioner, liable to be committed for contempt as if in breach of an order of the Court.

Part 3 — Processing of Complaints

Public complaints

15(1) A person, excluding an officer, may make a complaint under this Part

(a) against an officer, including a chief constable or deputy chief constable, or

(b) about a municipal police department.

(2) A complaint may initially be made orally, but before the complaint is processed under Part 4, 5 or 6, the complaint must be committed to writing, submitted to one or more persons referred to in subsection (4), and include the following information:

(a) the complainant's name, address and signature;

(b) details of the complaint including the date, time and place of the incident;

(c) the name and contact information of any witness known to the complainant;

(d) the name of the officer(s) and the police department involved, if known.

(3) A complaint may be submitted in Form 1.

(4) A person may submit a complaint to any of the following:

(a) the commissioner;

(b) the discipline authority;

(c) the senior constable of the municipal police department with which the respondent, if any, is employed or about which the complaint is made, who is on duty at the time that the complaint is submitted;

(d) any provincial, federal or local person, official or agency designated by the police complaint commissioner for receiving complaints under this Act.

(5) If a complaint is submitted to a person referred to in subsection (4) (b), (c) or (d), the person receiving the complaint must:

(a) give the person any advice or information required under a directive issued by the commissioner under section 9(7),

(b) give the person any assistance the person may require in completing and submitting the written complaint,

(c) advise the person submitting the complaint that the complaint may also be submitted to the commissioner, and

(d) within 10 business days after receiving the completed complaint, deliver a copy of the complaint as follows:

(i) if the complaint appears to be or to include a conduct complaint against a chief constable, to the board by which that chief constable is employed and to the commissioner, or

(ii) in any other case, to the commissioner and to the chief constable of the municipal police department about which the complaint is made or with which the respondent is employed.

(6) Where the person complains to the commissioner under subsection (4)(a), subsections (5)(a), (b) and (d) apply to the commissioner.

(7) Where a person in subsection (4)(b) and (c) receives a complaint and fails to comply with subsection (5), that officer commits the disciplinary default of neglect of duty as prescribed in the Code of Conduct Regulation.

(8) If the commissioner is satisfied that a person has habitually instituted vexatious or groundless complaints against police officers, the commissioner may, after giving him or her an opportunity to be heard and despite anything in this Act, order that:

(a) any further complaint received from that person shall be forwarded to the commissioner forthwith, and

(b) no further action need be taken under this Act in respect of a complaint from that person unless and to the extent that the commissioner orders.

(9) The commissioner must give written reasons for an order under subsection (8).

Characterizing record of complaint and notification

16(1) Promptly after receiving a written complaint under section 15, the chief constable or his delegate must

(a) characterize the complaint as one or more of the following:

(i) a public trust complaint;

(ii) an internal discipline complaint;

(iii) a service or policy complaint, and

(b) otherwise begin to process the complaint under this Act.

(2) In making a decision on characterization under subsection (1) (a), the chief constable or his delegate may consult with the commissioner.

(3) Within 10 business days after making a decision on characterization under subsection (1) (a), the chief constable or his delegate must send notice of that

decision to the commissioner and, if the characterization includes a conduct complaint, also provide notice to the respondent that the complaint has been submitted unless the recipient of the complaint under section 15(5)(d) determines that notification could jeopardize an investigation into the complaint.

(4) If the chief constable or his delegate withholds notice to a respondent under subsection (3), he must advise the commissioner of the withholding and provide reasons for it.

(5) The commissioner may order the discipline authority of the respondent to provide the notice to the respondent and the discipline authority must, within 10 business days after becoming aware of that order, provide the required notice to the respondent.

(6) The commissioner must review the decision on characterization under this section and may

(a) confirm the characterization,

(b) overrule, with reasons, the characterization and independently characterize the complaint, or

(c) request further information.

(7) The commissioner must

(a) make a decision under subsection (6) (a) or (b) within 10 business days after

(i) receiving the decision on characterization, or

(ii) if further information is requested under subsection (6) (c), receiving that information, and

(b) promptly after making a decision, provide notice of that decision to

(i) the discipline authority,

(ii) the complainant, and

(iii) the respondent, if any, unless a decision has been made under this section to withhold notice of a complaint.

(8) The decision of the commissioner under subsection (7) (a) or (b) is final unless new information comes to the commissioner's attention, in which case the police commissioner may

(a) change the characterization of the complaint, and

(b) make any other order allowed in relation to a complaint under this Part.

(9) Despite subsections (1) – (8), the commissioner may, on his own initiative, or on application by the chief constable or the respondent officer, order that the complaint process be terminated prior to or during the characterization stage if the commissioner determines that:

(a) the conduct, if proven, would not raise a public trust, internal discipline or service and policy matter within the scope of this Act,

(b) the complaint relates to a matter which has already been the subject of a complaint under this Act and is being, or has been, finally disposed of, or

(c) the complaint has no air of reality, is repetitive or is made for a frivolous, vexatious or other improper purpose.

(10) The commissioner must give written reasons for an order made under subsection (9).

Withdrawal of complaint

17(1) A complainant who wishes to withdraw a complaint may at any time deliver a written notice of withdrawal to the discipline authority or the commissioner, or both.

(2) If the notice of withdrawal under subsection (1) is delivered only to the discipline authority, the discipline authority must, within 10 business days after receipt, provide a copy of that notice to the commissioner.

(3) If the notice of withdrawal under subsection (1) is filed only with the commissioner, the commissioner must, within 10 business days after receipt, provide a copy of that notice to the discipline authority.

(4) After receiving a notice of withdrawal under subsection (1) or (2), the commissioner must, if the commissioner suspects that the notice of withdrawal may have been made under duress, make reasonable efforts to determine if duress was involved.

(5) If the commissioner determines that the notice of withdrawal was made under duress, the commissioner must order the discipline authority to conduct an investigation into one or more of the allegations in the complaint and to proceed with processing the complaint under this Part.

(6) If the commissioner determines that the notice of withdrawal was not made under duress, the commissioner may provide directions to the discipline authority with respect to the complaint.

(7) Directions provided under subsection (6) may, without limitation, include directions that the discipline authority conduct an investigation into any or all of the allegations in the complaint.

(8) The discipline authority must comply with any order made under subsection (5) or direction provided under subsection (6) and may, if and to the extent that it is not in conflict with that order or direction,

(a) continue to process the complaint under this Part, or

(b) summarily dismiss the complaint under section 22.

(9) Subject to subsection (10), and despite any other provision of this Part, if the discipline authority continues to process a complaint after a notice of withdrawal is filed by the complainant under subsection (1), the complainant is not entitled to receive any records created after the date on which the notice of withdrawal is filed.

(10) If a public hearing is arranged in respect of a complaint referred to in subsection (1) and the complainant is required to be a witness at the public hearing, the complainant is entitled, on a request made to the discipline authority before the date of the public hearing, to receive all of the records, reports and notices that the complainant would otherwise have received during the processing of the complaint.

Protection of sensitive law enforcement information

18(1) Despite anything in this Act, where the commissioner is satisfied, on *ex parte* application from any police officer or police agency, that disclosure of law enforcement information to a complainant would be contrary to the public interest, the commissioner may order that information not be disclosed to the complainant and other persons, or that it be disclosed on such terms and conditions as the commissioner specifies.

(2) Where the commissioner issues an order under subsection (1):

(a) a copy of that order shall be provided to the complainant, and

(b) the commissioner must take such reasonable safeguards regarding his own access to such information as to ensure its protection and confidentiality.

Part 4 — Public Trust Complaints

Definitions

19 In this Division:

"complainant" does not include a third party complainant.

"third party complainant" means a person who has made a public trust complaint but who is not personally adversely affected by the conduct complained of.

Third party complainants

20(1) Third party complainants have no rights under this Part unless and to the extent that the commissioner or an adjudicator so orders on being satisfied that good cause exists and that conferring such rights would not unduly prejudice a respondent or the public complaint process in this Part.

(2) A third party complainant may not be granted greater rights under subsection (1) than a complainant may be entitled to under this Act.

Resignation, retirement or transfer of officer

21(1) A public trust complaint against a respondent who, since the incident complained of, has resigned, retired or transferred to another municipal police force, must be processed as a public trust complaint under this Part despite the resignation, retirement or transfer unless the commissioner orders otherwise.

(2) Where the respondent has transferred from one municipal police force to another since the incident complained of, the officer must be disciplined as if he committed the discipline default in the service of the force to which the officer has transferred.

(3) Where the respondent has resigned or retired since the incident complained of, the investigation may be conducted by either the respondent's former police force or by the force to which he has transferred, despite the resignation, retirement or transfer of the respondent.

(4) If the chief constables of the forces referred to in subsection (3) cannot agree on which jurisdiction is to process the complaint, the commissioner must determine the matter.

(5) Where disciplinary or corrective measures cannot be taken against a respondent because the respondent has resigned or retired, a discipline default may still be recorded on the officer's record of service and the discipline authority or an adjudicator may permanently disqualify the respondent from exercising the functions of a municipal police officer, or may do so for any lesser period deemed appropriate.

(6) Where the commissioner is satisfied that an investigation under subsection (1) would not be in the public interest, the commissioner may order that a complaint against a respondent who has since retired, resigned or transferred need not be investigated, that it be investigated as a no fault inquiry under this Act, or that any investigation be terminated and that no decision need be made by the discipline authority.

Summary dismissal

22(1) A discipline authority may summarily dismiss a public trust complaint after the complaint has been characterized, whether or not the complainant or third party complainant has filed a notice of withdrawal under section 15, if the discipline authority is satisfied that

(a) there is no reasonable likelihood that further investigation would produce evidence of a public trust default,

(b) the complaint concerns an act or omission that, to the knowledge of the complainant or third party complainant, occurred more than 12 months before the complaint was made.

(c) the complaint has no air of reality, is repetitive or is made for a frivolous, vexatious or other improper purpose or motive.

(2) Subject to this section, a public trust complaint that has been summarily dismissed under subsection (1) must not be investigated or further investigated under this Division, but nothing in this subsection prevents further action being taken in relation to any internal discipline component or service or policy component of the complaint.

(3) If a discipline authority decides to summarily dismiss a public trust complaint, the discipline authority must, within 10 business days after making that decision, provide to the complainant, the respondent and the commissioner written notice of

the discipline authority's decision, the reasons for it and the recourse that is available to the complainant under this Part.

(4) A complainant may apply to the commissioner for a review of the decision of a discipline authority to summarily dismiss his or her complaint under this section.

(5) An application for a review under subsection (4) must be filed with the commissioner within 30 days after the date of the notice provided under subsection (3).

(6) Whether or not an application for a review is filed with the commissioner in relation to a public trust complaint that is summarily dismissed under this section, the commissioner must, within 60 days after the date of the notice provided under subsection (3),

(a) examine the discipline authority's decision and the reasons for the summary dismissal, and

(i) confirm the discipline authority's decision, or

(ii) if the commissioner concludes that it is in the public interest to investigate the complaint, order the discipline authority to conduct an investigation into the complaint.

(b) notify in writing the discipline authority, the complainant and the respondent of the outcome and reasons resulting from commissioner's examination under paragraph (a).

(7) The decision of a discipline authority to summarily dismiss a public trust complaint is final and the complaint is deemed to have been dismissed unless

(a) an application for review is received by the commissioner under subsection (5),

(b) the commissioner makes an order under subsection (6) (a) (ii) or section 26, or

(c) the discipline authority reconsiders the summary dismissal decision after consultation with the office of the commissioner, or based on new information.

(8) Whether or not, within the time required by this section, an application for review is received under subsection (5) or an order is made under subsection (6) (a) (ii), the commissioner may at any time order a discipline authority to investigate a

public trust complaint that has been summarily dismissed if new information is received that, in the opinion of the commissioner, requires an investigation.

(9) On receiving new information and ordering a discipline authority to investigate a public trust complaint under subsection (8), the commissioner must notify in writing the discipline authority, the complainant and the respondent of the nature of the new information and the reasons for ordering the investigation.

(10) The discipline authority to whom an order under subsection (6) (a) (ii) or (8) is directed must conduct the investigation ordered.

Informal resolution

23(1) Unless the complaint is summarily dismissed under section 22, the discipline authority must, promptly after receiving a public trust complaint, and may, at any later time, determine whether an informal resolution of the complaint is appropriate.

(2) If an informal resolution is determined to be inappropriate, the discipline authority must proceed with an investigation of the complaint under section 25 or 26.

(3) Subject to subsection (4), if an informal resolution is determined to be appropriate, the discipline authority must seek the consent of the complainant and the respondent to informal resolution.

(4) The discipline authority must not proceed with an informal resolution of a complaint referred to in subsection (1) unless the complainant and the respondent consent to that procedure.

(5) The discipline authority may, for the purposes of informally resolving a complaint under this section, do one or both of the following:

(a) use any one or more means of alternate dispute resolution;

(b) enlist the assistance of a neutral and independent person as mediator.

(6) Informal resolution must be pursued in accordance with any directives respecting informal resolution that are established by the commissioner.

(7) Complainants have the right to seek advice before and during an attempt to informally resolve a complaint under this section and the discipline authority must inform the complainant of that right at the time that the complainant's consent to the process is being sought.

(8) The commissioner must make available a list of support groups and neutral dispute resolution service providers and agencies that may assist complainants with the informal resolution process under this section, and the person with whom a public trust complaint is lodged must provide that list to the complainant when the complaint is lodged.

(9) In the informal resolution process, a complainant may enlist the assistance of a support person of the complainant's choice or may ask the commissioner to appoint a support person for the complainant.

(10) A support person, enlisted or appointed under subsection (9), may

(a) be present at any interview about the complaint and at any mediation or informal resolution session, and

(b) participate at any of those sessions with the consent of the respondent.

(11) The complainant or respondent may ask the commissioner to appoint a mediator, if one has not already been enlisted under subsection (5) (b), and the commissioner may appoint a mediator if the commissioner considers it appropriate.

(12) No oral or written statement made or given by any person in the course of an attempt to resolve the complaint informally may be used or received as evidence in any civil, criminal or administrative proceeding, including, without limitation, a public hearing.

(13) Without limiting subsection (12), an apology by the complainant or respondent must not be admitted into evidence or construed as an admission of fault at any subsequent civil, criminal or administrative proceeding or in any subsequent proceeding under this Act.

(14) Whether or not a complaint is resolved informally under this section, the discipline authority must notify the complainant, the respondent and the commissioner of the results of any attempt at informal resolution.

(15) The commissioner may, at any time, direct a complainant and a respondent to participate in a mandatory informal resolution process, and the commissioner may suspend the investigation and the timelines set out in the Act until the resolution process is complete.

(16) An informal resolution process referred to in subsection (15) is subject to subsections (12) and (13) and subject to any practice directives excluding certain types of complaints from mandatory informal resolution.

(17) The costs of a dispute resolution process under subsections (5), (11) or (15) are to be paid by the municipality out of which the complaint arises.

Reaching resolution through informal resolution process

24(1) Subject to subsection (3), a complaint is resolved when the complainant and the respondent

(a) sign a letter consenting to the resolution of the complaint in the manner set out in the letter, and

(b) provide that letter to the discipline authority, with a copy to the commissioner.

(2) Within 10 business days after signing the letter referred to in subsection (1), a signatory to that letter may, by written notice of revocation to the discipline authority or the commissioner, revoke the signatory's consent to the informal resolution.

(3) If a consent to an informal resolution is revoked under subsection (2),

(a) the resolution is of no effect, and

(b) the recipient of the notice of revocation must, within 10 business days after receiving the notice, provide notice of the revocation to those of the commissioner, the discipline authority, the complainant and the respondent who are not aware of that revocation.

(4) Unless the complainant or the respondent revokes consent under subsection (2), the informal resolution set out in the letter signed under subsection (1) is final and binding on them after the expiration of the period referred to in subsection (2).

(5) No disciplinary action may be taken against a respondent as a result of an informal resolution of a complaint until the informal resolution has become binding under subsection (4).

(6) A complaint that is resolved by informal resolution must not be entered in a respondent's service record of discipline, but may be entered in a respondent's personnel file.

(7) A record respecting an informal resolution that is entered in an officer's personnel file may only be opened

(a) for the purposes of deciding whether a subsequent attempt at informal resolution is appropriate, or

(b) for personnel matters unrelated to discipline.

(8) The terms of any informal resolution must be submitted to the commissioner for approval, and in deciding whether to grant approval, the commissioner may undertake such inquiries of persons, including the parties to an informal resolution, as the commissioner considers appropriate.

(9) Where the commissioner concludes that an informal resolution is contrary to the public interest, the commissioner may, without disclosing the content of informal resolution discussions, refuse to approve the informal resolution and may order the discipline authority to continue to process the complaint.

(10) The commissioner must make a decision whether to refuse or approve an informal resolution within 30 business days of receiving a copy of the informal resolution, unless the commissioner notifies the parties, in advance of the deadline, that he requires additional time to make his decision.

(11) Where the commissioner is satisfied that there is new evidence and that exceptional circumstances exist, the commissioner may order an investigation or public hearing into any matter despite any prior informal resolution and approval by the commissioner.

Investigation of public trust complaints

25(1) Subject to sections 20 and 24, if a public trust complaint is submitted under this Part, the discipline authority must promptly initiate an investigation into the complaint if

(a) informal resolution of the complaint is not attempted or is unsuccessful, or

(b) the discipline authority is ordered to conduct an investigation by the commissioner.

(2) If an investigation is not initiated within 45 days after the complaint is submitted to the discipline authority, the discipline authority must notify the commissioner of the reasons for the delay.

(3) The discipline authority must refer an investigation into a public trust complaint to another municipal police department if the discipline authority considers an external investigation is necessary in order to preserve public confidence in the complaint process.

Commissioner's power to order investigations

26(1) Despite any other provision of this Act, whether or not a matter involves a public trust complaint and whether or not a public hearing has been arranged, the commissioner may, at any time:

(a) order an investigation into the conduct of an officer, whether or not a complaint has been made, or

(b) order a new investigation or an investigation by another municipal police department or the provincial police force if the commissioner concludes:

(i) that the original investigation was inadequate or unreasonably delayed, or

(ii) that a new or external investigation is otherwise in the public interest.

(2) The chief constable of a municipal police department and the commanding officer of the provincial police force are under a duty to comply with an order issued to them under subsection (1).

(3) Where the commissioner issues an order under subsection (1), the commissioner may make consequential orders, including orders:

(a) that any existing investigation under the Act shall cease and that all existing information or evidence secured pertaining to that investigation be made available to or delivered to the commissioner or to the new investigating officer,

(b) that any investigating officer with prior conduct of the investigation shall attend for an interview with the commissioner or the new investigating officer.

(4) The commissioner must give reasons for an order under subsection (1) unless he concludes that the giving of reasons would undermine the ordered investigation.

(5) The costs of an investigation ordered under this section are to be paid by the police force required to undertake the investigation unless the commissioner makes an order that costs be paid by another force or that they be shared between police forces.

Investigating officer

27(1) Subject to subsection (2), the investigating officer charged with investigating a public trust complaint against an officer must be appointed:

(a) by the chief constable of the police force or police department with which the officer is employed,

(b) by the commanding officer of the provincial police force, if the investigation is conducted by the provincial police force, or

(c) if the investigation is an external investigation, by the chief constable of the police department conducting the external investigation.

(2) A person must not be appointed as investigating officer under subsection (1) if

(a) the person's rank is not equal to or higher than the rank of the respondent, or

(b) the person has a connection with the complaint.

(3) If the discipline authority requests a report referred to in section 29, the investigating officer appointed to conduct the investigation must promptly provide the discipline authority with any information necessary for the discipline authority to comply with section 29 (1) and (5).

Administrative search and seizure

28(1) For any purpose of this Act, an investigating officer may, if he or she has reasonable grounds to believe that it is necessary to do so, and, after informing the chief constable in writing of his intention to do so, enter without a warrant onto premises or property owned or occupied by a municipal police force and examine there books of account, records, documents, work, material and other things related to the investigation, and the persons in those premises shall

(a) answer all questions concerning those matters put to them; and

(b) produce for inspection and copying books of account, physical or electronic records, documents, work, material and other things related to that investigation.

(2) Where a justice of the peace or a judge of the Provincial Court is satisfied, by written information *ex parte* upon oath of an investigating officer that there are reasonable grounds to believe that there is in a building, receptacle or place

anything relevant to an investigation under this Act or to the commission of a disciplinary default under this Act or the Code of Professional Conduct Regulation, the justice may issue a warrant, in the prescribed form, authorizing the person named therein to search the building, receptacle or place for any such thing, and to seize the thing and use it for any purpose pertaining to this Act.

(3) Any person who conceals or intentionally destroys physical or electronic documents or things relating to an investigation commits an offence.

Reports during investigations and extensions of investigations

29(1) Unless subsection (2) applies, the discipline authority must report to the complainant, the respondent and the commissioner on the progress of an investigation conducted under section 25 or 26 by providing to them

(a) an initial report within 45 days after the initiation of the investigation, and

(b) follow-up reports for so long as the investigation continues and at least once every 45 days after the date of the initial report.

(2) Subject to subsection (4), a report must not be sent to the complainant or respondent under subsection (1) if the discipline authority considers that sending the report to that person would hinder the investigation.

(3) If the discipline authority withholds a report under subsection (2), the discipline authority must advise the commissioner of the withholding and provide reasons for it.

(4) The commissioner may order the discipline authority to provide a report under subsection (1) to a person referred to in subsection (2) and the discipline authority must, within 10 business days after becoming aware of that order, provide the required report to the person.

(5) In addition to the reports provided under subsection (1), the commissioner may at any time request a progress report on an investigation and the discipline authority must provide that report to the commissioner within 10 business days after receiving that request.

(6) Within 10 business days after the conclusion of an investigation, the investigating officer must complete a report of the investigation, including in it his or her findings, conclusions, recommendations and any prescribed matters, and must

(a) provide that final investigation report and any other prescribed records to the discipline authority, and

(b) if the investigation was conducted under section 9(10) or section 26, provide a copy of that final investigation report and any other prescribed records to the commissioner.

(7) The investigating officer must complete and submit the final investigation report:

(a) in the case of an investigation ordered by the commissioner, by the date specified in the investigation order,

(b) in the case of a complaint submitted under section 15, within 6 months from the date the complaint was submitted to the chief constable.

Reassignment or suspension pending an investigation and hearing

30(1) If an officer is being investigated as a result of an allegation that that person committed an offence under a federal or provincial enactment or as a result of a complaint against that person under this Act, the discipline authority for that person may, until the completion of that investigation, reassign or suspend the person with his or her pay, if

(a) the discipline authority considers that

(i) reassignment or suspension of the person is needed to protect officers or other persons from the risk of harm,

(ii) failure to reassign or suspend the person is likely to bring the reputation of a municipal police department or other law enforcement organization as a whole into disrepute, or

(iii) there are grounds to believe that the person is incapable of carrying out his or her regular duties as an officer, and

(b) the discipline authority considers that there is no reasonable alternative available.

(2) During a period of suspension from duty, an officer must not exercise powers as an officer and must not wear or use the uniform or equipment of an officer.

(3) At the earliest opportunity, and in any event within 10 business days after the suspension, the discipline authority must decide whether the suspension is to continue in effect or is to be rescinded with or without conditions.

(4) Unless subsection (5) applies, an officer under suspension must receive his or her pay and allowances for the number of days he or she would have worked during the period of suspension had the suspension not been imposed.

(5) The board may, at any time, discontinue the pay and allowances of an officer who is under suspension if the allegation in response to which the suspension was imposed would, if proved, constitute a criminal offence or if the board otherwise concludes that there are strong reasons in the public interest not to do so.

(6) Written notice of a decision by the board to discontinue the pay and allowances of an officer must be given promptly to the officer, and that officer may, within 10 business days after receipt, request a hearing before the board.

(7) Within 30 days after receiving a request under subsection (6), the board must hold a hearing to review the decision to discontinue pay and allowances.

(8) The officer who requests a hearing under subsection (6) may appear at the hearing personally or by counsel or agent.

(9) An officer must receive his or her full pay and allowances for any unpaid period of suspension if

(a) the suspension related to an investigation resulting from an allegation that he or she committed an offence under a federal or provincial enactment,

(b) he or she is acquitted of all charges in proceedings before a criminal court or the charges are withdrawn, stayed or otherwise not proceeded with, and

(c) no disciplinary or corrective measures are imposed on him or her for the acts or omissions that constituted the alleged offence.

(10) Where an officer to whom this Act applies is not employed by a board, the board's functions as described in this section shall be exercised by the person or body designated for that purpose by regulation as if it were a board.

Disclosure of documents

31(1) Within 10 business days after receiving the final investigation report, the discipline authority must provide to the complainant and to the respondent a summary of that report, including

(a) a concise factual account of any incident that brought about the complaint,

(b) a brief account of the investigative steps taken, and

(c) a brief account of the findings, conclusions and recommendations contained in that report,

and the discipline authority may sever from the summary provided any portions of the report that may be excepted from disclosure under the *Freedom of Information and Protection of Privacy Act*.

(2) The discipline authority must promptly after receipt provide the commissioner with a complete unedited copy of the final investigation report and, subject to subsection (3), provide the commissioner with any other record that

(a) concerns the complaint and the complainant or the third party complainant, as the case may be, and

(b) is in the custody or control of its municipal police department or, as the case may be, in the custody and control of its municipal police department and of the investigating officer's police force or police department,

including, without limitation,

(c) all related records,

(d) all reasons for imposing or not imposing disciplinary or corrective measures in relation to the complaint,

(e) all written policies or procedures that may have been a factor in the act or omission that gave rise to the complaint, and

(f) the respondent's service record of discipline.

(3) By agreement between a discipline authority and the commissioner, the requirement imposed on the discipline authority to provide the commissioner with a record referred to in subsection (2) may be satisfied if unlimited access to, inspection and production of the record is granted by the discipline authority to the satisfaction of the commissioner.

(4) Within 10 business days after receiving the summary of the final investigation report referred to in subsection (1), the complainant or respondent may apply to the commissioner for disclosure of all or part of the report.

(5) The commissioner may order the discipline authority to disclose information requested under subsection (4) if the commissioner considers that

(a) disclosure is necessary for the applicant to pursue rights granted by this Act, and

(b) disclosure is appropriate having regard to the factors set out in Part 2 of the *Freedom of Information and Protection of Privacy Act.*

Notice to respondent and complainant

32(1) Within 10 business days after receiving a final investigation report, the discipline authority must determine if the evidence contained in that report is sufficient to warrant the imposition of disciplinary or corrective measures and must,

(a) if it is determined that disciplinary or corrective measures are warranted, serve notice to that effect on the respondent and send a copy of that notice by registered mail to the complainant, or

(b) if it is determined that disciplinary or corrective measures are not warranted, send notice to that effect by registered mail to the respondent and the complainant, and subsection (4) applies.

(2) A notice provided under subsection (1) (a) must set out

(a) the nature of the complaint in sufficient factual detail to identify the incident,

(b) the alleged discipline defaults, identifying those sections of the Code of Professional Conduct alleged to be breached,

(c) whether the complaint was dealt with as a public trust complaint or as an internal discipline complaint,

(d) whether a prehearing conference will be offered, and

(e) a description of the response proposed by the discipline authority to each alleged discipline default.

(3) A complainant who is aggrieved by the determination made by the discipline authority under subsection (1) (b) may file with the commissioner a written request for a public hearing in accordance with section 37 (1) (b) and section 37 (2) applies.

(4) Unless the commissioner arranges a public hearing, a determination made under subsection (1) (b) is final and conclusive and is not open to question or review by a court on any ground.

Pre-hearing conferences

33(1) If the discipline authority considers that the evidence contained in a final investigation report is sufficient to justify the imposition of disciplinary or corrective measures against a respondent and the discipline authority has complied with section 32 (1) and (2), the discipline authority may offer the respondent a confidential, without prejudice, pre-hearing conference to determine whether the respondent is willing to admit a public trust default and, if so, what disciplinary or corrective measures the respondent is willing to accept.

(2) A pre-hearing conference must not be offered if the discipline authority concludes that

(a) the complaint against the respondent is sufficiently serious to warrant dismissal or reduction in rank, or

(b) a pre-hearing conference would be contrary to the public interest.

(3) The discipline authority must make the decision whether to offer a pre-hearing conference no later than 10 business days after receiving the final investigation report, and if a pre-hearing conference is to be held, the respondent must accept and the pre-hearing conference must take place no later than 30 days after the discipline authority has received the final investigation report.

(4) If a respondent accepts an offer for a pre-hearing conference under subsection (1), the respondent may be accompanied at the pre-hearing conference by one or both of the following:

(a) an agent;

(b) the respondent's counsel.

(5) A discipline authority must use the principles and guidelines set out in the Code of Professional Conduct in proposing and approving any disciplinary or corrective measures under this section.

(6) If disciplinary or corrective measures are accepted by a respondent and approved by the discipline authority at a pre-hearing conference in relation to any alleged discipline default respecting the complaint lodged, the discipline authority must,

(a) within 10 business days after the pre-hearing conference, serve on the complainant, or send to the complainant by registered mail, and provide the commissioner with, a report that sets out

(i) for each alleged discipline default,

(ii) any disciplinary or corrective measure accepted and approved, and

(iii) any policy change being considered by the discipline authority in respect of the matter,

(iv) the reasons for the proposed measures or policy changes,

(iii) any noted aggravating and mitigating factors in the case, subject to severing those portions of the disposition record that may be excepted from disclosure under the *Freedom of Information and Protection of Privacy Act*, and

(iv) the recourse available to the complainant under this section, and

(b) if the resolution is final and conclusive under subsection (7), record on the respondent's service record of discipline the respondent's admission, any disciplinary or corrective measure approved and the fact that the measure was voluntarily accepted by the respondent.

(7) Disciplinary or corrective measures accepted by a respondent and approved by the discipline authority at a pre-hearing conference constitute a resolution of the matter and, unless a public hearing in respect of the complaint is arranged by the commissioner, the resolution is final and conclusive and is not open to question or review by a court on any ground.

(8) Within 30 days of being served with a report under subsection (5), a complainant may file with the commissioner a written request for a public hearing in accordance with section 37 (1) (c) and section 37 (2) applies.

(9) The commissioner must make a decision on an application under subsection (6) within 60 days from receiving the application, or on his own motion within 90 days of being served with a report under subsection (5), but the commissioner may reopen consideration of the matter at any time if new information comes to the attention of the commissioner.

Convening discipline proceedings

34(1) Subject to subsection (2), if it is determined under section 32 (1) (a) that imposition of disciplinary or corrective measures against a respondent is warranted and a pre-hearing conference is not offered or held under section 33 or, if held, does not result in a resolution of all alleged discipline defaults respecting the complaint, the discipline authority must

(a) convene and preside at a discipline proceeding,

(b) provide to the complainant at least 15 business days' notice of the discipline proceeding, and

(c) serve the respondent with at least 15 business days' notice, in the prescribed form, of the discipline proceeding.

(2) Despite subsection (1), where a discipline authority has participated in a pre-hearing conference under section 33 and the pre-hearing conference has not resolved the complaint, the discipline proceeding must be conducted by the chief constable of another municipal department unless the respondent consents to the discipline authority conducting the discipline hearing.

(3) If at any time a public hearing is arranged by the commissioner in respect of a matter that is the subject of a discipline proceeding under subsection (1), the discipline authority must cancel the discipline proceeding.

(4) At any time before a discipline proceeding is held under this section, the complainant may make written or oral submissions to the discipline authority respecting the complaint, the adequacy of the investigation and the range of disciplinary or corrective measures that should be considered.

(5) The following persons may attend a discipline proceeding under this section:

(a) the commissioner or the commissioner's delegate;

(b) the respondent's agent or counsel, or both.

(6) The following persons must attend a discipline proceeding under this section:

(a) the respondent;

(b) the discipline authority;

(c) the investigating officer.

(7) A discipline proceeding must be conducted within 60 days from the date that the discipline authority was served with the final investigation report.

Conduct of discipline proceedings

35(1) Each alleged discipline default respecting the complaint, other than those resolved at a pre-hearing conference held in respect of the matter under section 33,

must be read to the respondent at a discipline proceeding, and the respondent must be asked to admit or deny the alleged discipline default.

(2) No witnesses, other than the respondent and the investigating officer who prepared the final investigation report, may be called at a discipline proceeding and the only records that may be presented are the records tendered by the respondent, the final investigation report, any separate reports prepared respecting the investigation and any other relevant written records, from which reports and records may be severed any portions that may be excepted from disclosure under the *Freedom of Information and Protection of Privacy Act*.

(3) The respondent, or his or her agent or counsel, if any, may

(a) ask questions of the investigating officer who prepared the final investigation report, and

(b) make submissions concerning the complaint, the adequacy of the investigation and the range of disciplinary or corrective measures that should be considered.

(4) The investigating officer and the discipline authority may ask questions of the respondent at a discipline hearing.

(5) A discipline proceeding must be electronically recorded, and carried out *in camera*.

(6) The discipline authority may retain legal counsel to provide him or her with confidential procedural and legal advice regarding the conduct of the proceeding.

(7) A discipline authority may suspend the discipline hearing where significant new evidence is tendered at the hearing that causes the discipline authority to conclude that further investigation is required before the discipline authority makes a finding under this section.

(8) At the conclusion of a discipline proceeding under this section, the discipline authority must

(a) in relation to each alleged discipline default under subsection (1), make a finding as to whether the discipline default has been proved on the civil standard of proof,

(b) record those findings in the prescribed form, and

(c) invite and hear submissions from the respondent, or his or her agent or counsel, and a recommendation from the investigating officer, as to

appropriate disciplinary or corrective measures for each discipline default found to be proven under paragraph (a).

(9) Within 10 business days after hearing submissions from the respondent, or his or her agent or counsel and a recommendation from the investigating officer, at the conclusion of a discipline proceeding under subsection (5), the discipline authority must

(a) propose disciplinary or corrective measures for each discipline default found to be proven under subsection (5) (a),

(b) record those proposed measures and the date in a disposition record in the prescribed form,

(c) include in the disposition record any aggravating or mitigating factors in the case, and

(d) serve a copy of the disposition record on the respondent.

Review of discipline proceedings

36(1) Within 10 business days after the date of the disposition record referred to in section 35 (9), the discipline authority must

(a) serve on the complainant or send to the complainant by registered mail a report setting out

(i) the findings of the discipline authority under section 35 (8) (a),

(ii) any disciplinary or corrective measures proposed by the discipline authority under section 35 (9) (a) and any policy changes being considered by the discipline authority in respect of the complaint,

(iii) the reasons for the proposed measures or policy changes,

(iv) any noted aggravating and mitigating factors in the case, subject to severing those portions of the disposition record that may be excepted from disclosure under the *Freedom of Information and Protection of Privacy Act*, and

(v) the recourse available to the complainant under this section, and

(b) provide the commissioner with the entire unedited record of the proceedings, an unedited copy of the disposition record and a copy of the report sent to the complainant under paragraph (a).

(2) After receiving the records and report referred to in subsection (1) (b), the commissioner may

(a) order that the discipline authority provide to the commissioner further reasons justifying the particular disciplinary or corrective measures imposed, and

(b) provide those further reasons to the complainant and the respondent.

(3) A respondent or complainant who is aggrieved by the disposition of a public trust complaint proposed by a discipline authority in a disposition record may file with the commissioner a written request for a public hearing in accordance with section 37 (1) (a) or (d), as the case may be, and section 37 (2) applies.

(4) Unless a public hearing is arranged by the commissioner,

(a) the complainant and respondent referred to in this section are deemed to have accepted the proposed disposition,

(b) any disciplinary or corrective measures proposed under section 35 (9) (a) are final and binding, and

(c) the proposed disposition is final and conclusive and is not open to question or review by a court on any ground.

Request for a public hearing

37(1) A written request for a public hearing must be received by the commissioner,

(a) in the case of a respondent, within 30 days after receiving the disposition record under section 35 (9),

(b) in the case of a complainant seeking a public hearing under section 32 (3), within 30 days after the later of

(i) the date on which the complainant received the notice under section 32 (1), and

(ii) the date on which the complainant receives the information disclosed by the commissioner under section 31 (5) or receives the decision of the commissioner that no further information will be disclosed,

(c) in the case of a complainant seeking a public hearing under section 33 (7), within 30 days after receiving the report provided under section 33 (5) (a), or

(d) in the case of a complainant seeking a public hearing under section 36 (3), within 30 days after receiving the report provided under section 36 (1) (a).

(2) Despite subsection (1), the commissioner may extend the period within which a public hearing may be requested if the commissioner considers that there are reasonable grounds for the delay in making the request.

(3) The commissioner must arrange a public hearing under section 38 if

(a) the request for a public hearing is made by a respondent and a disciplinary or corrective measure of dismissal, reduction in rank or suspension without pay has been proposed for that respondent, or

(b) in any other case, the commissioner determines that there are grounds to believe that a public hearing is necessary in the public interest.

(4) The commissioner may arrange a public hearing without a request from either a complainant or respondent if the commissioner considers that there are grounds to believe that the public hearing is necessary in the public interest.

(5) In deciding whether a public hearing is necessary in the public interest, the commissioner must consider all relevant factors including, without limitation, the following factors:

(a) the seriousness of the complaint;

(b) the seriousness of the harm alleged to have been suffered by the complainant;

(c) whether there is a reasonable prospect that a public hearing would assist in ascertaining the truth;

(d) whether an arguable case can be made that

(i) there was a flaw in the investigation,

(ii) the disciplinary or corrective measures proposed are inappropriate or inadequate, or

(iii) the discipline authority's interpretation of the Code of Professional Conduct was incorrect;

(e) whether a hearing is necessary to preserve or restore public confidence in the complaint process or in the police.

(6) Subject to any investigation order the commissioner is authorized to make under this Act, the commissioner who receives a request to arrange a public hearing, other than a request under subsection (3)(a), must make a decision regarding whether to arrange a public hearing:

(a) within 90 business days of receiving the complainant's request for a public hearing and the full unedited record of the proceedings, including the final investigation report, or

(b) where no request has been made to hold a public hearing, within 120 business days from receiving the full edited record of the proceedings, including the final investigation report.

(7) Despite subsection (6), the commissioner may reopen any decision not to hold a public hearing and may order a public hearing if the commissioner is satisfied that new or additional information warrants a public hearing.

(8) Within 10 business days after making a decision to arrange or to refuse to arrange a public hearing under this section, the commissioner must notify the discipline authority, complainant and respondent of that decision.

(9) Where the commissioner decides to arrange a public hearing at the request of a complainant or on his own motion, he shall provide the persons listed in subsection (8) with a document that summarizes the issues and sections of the Code of Professional Conduct Regulation that are relevant to the alleged discipline defaults.

(10) The commissioner shall provide reasons for refusing to order a public hearing.

(11) The commissioner may, at any time after he orders a public hearing under subsection (3)(b) or (4) or under section 44 (6), withdraw and cancel the public hearing, with reasons.

(12) A respondent who has requested and obtained a public hearing as of right or by order of the commissioner may withdraw his request and ask the commissioner to cancel the public hearing.

(13) If the commissioner cancels a public hearing under subsection (12), the respondent is deemed to have accepted and findings and discipline proposed by the discipline authority.

(14) The commissioner must cancel a public hearing upon application by the respondent under subsection (12) unless the commissioner concludes that the public interest requires the continuation of the public hearing.

Ordering public hearings

38(1) Public hearings respecting the disposition, proposed by a discipline authority, of a public trust complaint must be conducted before an adjudicator.

(2) If the commissioner arranges a public hearing under section 37 or orders a public hearing under section 44 (6),

(a) the commissioner must request the Chief Justice of the Supreme Court, the Chief Justice of the Court of Appeal, the Chief Judge of the Provincial Court, or their respective designates, to appoint a retired justice or judge to preside as an adjudicator at the public hearing, and

(b) the adjudicator appointed must arrange and set the earliest practicable date or dates for that public hearing.

(3) Subject to subsection (4), at least 15 business days before the scheduled date for a public hearing or continuation, the commissioner must serve the respondent, complainant and discipline authority with written notice of the date, time and place of the hearing.

(4) If, after reasonable effort, service cannot be effected on a complainant under subsection (3), the commissioner may provide the notice referred to in that subsection by registered mail to the complainant's last address known to, or on record with, the commissioner.

(5) Where an adjudicator appointed under subsection (2) is unable for any reason to continue or complete a public hearing, the commissioner must follow the process in subsection (2) and request that a new adjudicator be appointed.

(6) A new adjudicator appointed under subsection (5) shall review the transcripts and evidence, and continue the hearing unless the adjudicator determines that it would be impossible to conduct a proper adjudication without rehearing some or all of the evidence, in which case the adjudicator shall take steps as are necessary and convenient to do so.

Public hearing procedures

39(1) In this section, "commissioner's counsel" means counsel appointed and instructed by the commissioner under subsection (2), or the commissioner personally.

(2) The commissioner may appoint

(a) counsel to present to an adjudicator the case relative to the alleged discipline defaults respecting a public trust complaint,

(b) a registrar to assist the adjudicator by acting as public hearing clerk to perform all registry functions pertaining to the public hearing and any pre-hearing conference.

(3) Without limiting the commissioner's other powers conferred under this Act, the commissioner or commissioner's counsel may, in preparation for a public hearing, undertake any such inquiries or investigations as considered necessary to properly present the case as required under subsection (2).

(4) Subject to this section and subject to any public hearing rules issued under this Act, the adjudicator may give such hearing and pre-hearing directions, and may make such hearing and pre-hearing orders, as will ensure the fair, timely and effective conduct of the public hearing.

(5) For the purpose of a public hearing, commissioner's counsel may

(a) call and cross-examine any witness who, in the opinion of commissioner's counsel, has relevant evidence to give, whether or not the witness was called by commissioner's counsel and whether or not that witness was interviewed during the original investigation,

(b) introduce into evidence any record, including, without limitation, any record of the proceedings concerning the complaint up to the date of the hearing, but excluding information relative to an informal settlement process

(c) advance written and oral submissions.

(6) For the purpose of a public hearing, the respondent may

(a) be represented by legal counsel or an agent.

(b) call or cross-examine witnesses,

(c) introduce into evidence any record excluding evidence relative to an informal settlement process; and

(d) advance written and oral submissions.

(7) For the purpose of public hearing, a complainant has the right to make oral or written submissions with regard to discipline default and penalty after all the evidence is called, but has no right to call or cross-examine witnesses or participate in the development of any statement of agreed fact unless and to the extent that the adjudicator concludes that such participation, on the terms and conditions the adjudicator imposes, is necessary to ascertain the truth.

(8) On application by a complainant, an adjudicator may order commissioner's counsel to make such disclosure to the complainant at the time and to the extent that the adjudicator considers necessary for the complainant to effectively participate in the public hearing under subsection (7), and subject to any terms and conditions deemed appropriate to protect the confidentiality and use of the information disclosed.

(9) Despite subsection (8), a complainant whose participation is limited to making oral or written submissions after all the evidence is called is entitled to disclosure only of copies of documentary evidence that are admitted as evidence in the public hearing.

(10) For the purpose of a public hearing, an adjudicator may confer intervener status on any person where the adjudicator is satisfied that the person has a legitimate interest in the hearing and can make a valuable contribution to its outcome, but no intervener may be granted leave to participate in the evidentiary portion of the hearing.

(11) A public hearing must be open to the public unless, on the application of the complainant or respondent, the adjudicator orders that in order to protect a substantial and compelling privacy interest of one or more of the persons attending the hearing, it is necessary to order:

(a) a publication ban, or

(b) that some or all of the hearing be held in private or in the absence of one or more parties.

(12) The adjudicator may direct that all or part of the evidence of a witness or documentary evidence be received in confidence to the exclusion of a party or parties, on terms the adjudicator considers necessary, if the adjudicator is of the opinion that the nature of the information or documents requires that direction to:

(a) protect the safety of a witness,

(b) to protect the disclosure of investigative techniques or the identity of an undercover officer,

(c) to protect information regarding organized crime or national security, or

(d) to ensure the proper administration of justice.

(13) The adjudicator must decide whether each alleged discipline default respecting the complaint has been proved on the civil standard of proof and may do one or more of the following:

(a) find that all, part or none of the alleged discipline default has been proved on the civil standard of proof;

(b) impose any disciplinary or corrective measures that may be imposed by a discipline authority;

(c) affirm, increase or reduce the disciplinary or corrective measures proposed by the discipline authority.

(14) The adjudicator shall not make a decision regarding whether or not disciplinary or corrective measures should be imposed on a respondent without first giving the parties an opportunity to be heard.

(15) Within 10 business days after reaching a decision under subsection (13) or (14), the adjudicator must provide notice of that decision to the office of the commissioner, who shall in turn distribute those reasons to the parties to the public hearing and the discipline authority.

(16) In conducting a public hearing, the adjudicator has the protections, privileges and powers of a commissioner under sections 12, 15 and 16 of the *Inquiry Act*.

(17) The cost of a public hearing incurred by the commissioner under this section shall be paid by the Minister of Finance out of the Consolidated Revenue Fund.

Fitness of respondent

39.1(1) Without limiting subsection 39 (3), an adjudicator may, on application by commissioner's counsel, the respondent, or on its own motion, order an assessment of the mental or physical condition of a respondent, if the adjudicator has reasonable grounds to believe that such evidence is necessary to determine whether the respondent is fit to testify or participate in a public hearing.

(2) A respondent is unfit to testify or participate in a public hearing process if the respondent is:

(a) mentally unable to understand the nature and object of the proceedings or to communicate with counsel, or

(b) physically unable to participate in the proceeding without causing a grave risk to life or health.

(3) An assessment order under subsection (1):

(a) shall be carried out by a psychiatrist from the Forensic Psychiatric Services Commission, if the assessment is for mental fitness;

(b) may be carried out by a physician approved by the adjudicator if the fitness assessment arises from a physical ailment;

(c) shall not include a provision that the respondent be detained for purposes of the assessment; and

(d) shall specify the period during which the assessment order is in force, which period shall not exceed 30 business days unless there are compelling circumstances.

(4) A public hearing is suspended if the adjudicator finds that the respondent is unfit to participate in the hearing.

(5) A hearing that is suspended under subsection (4) and that is not withdrawn by the commissioner must be reviewed by an adjudicator within 12 months from the adjudicator's finding of unfitness to determine whether the hearing should continue.

Compellability

40(1) A respondent can be compelled by order of the discipline authority to give oral evidence or produce documents, or both, to an investigating officer, or to the discipline authority at a discipline proceeding.

(2) A respondent can be compelled by order of an adjudicator to give oral evidence or produce documents, or both, at a public hearing.

(3) Despite subsections (1) and (2), a respondent cannot be compelled to give evidence that is protected by the law of privilege.

(4) Evidence given by a respondent under compulsion during an investigation, at a discipline proceeding or a public hearing is privileged and must not be admitted in

any civil proceeding outside this Act involving the respondent or the respondent`s employer.

(5) Nothing in this Act limits the rights of any person to the protection provided by the *Canadian Charter of Rights and Freedoms* against the use of voluntary or compelled statements in criminal or quasi-criminal proceedings.

Appeal of adjudicator's decision

41(1) The commissioner, a respondent, or a complainant may, with leave of a justice of the Court of Appeal, appeal the final decision of an adjudicator under section 39 to the Court of Appeal on a question of law.

(2) Technical errors as to form, failure to file or give notice on time and other procedural errors of a minor nature do not go to jurisdiction and may not be appealed to the Court of Appeal on any ground, unless the error prejudiced a fair determination of the issues at a public hearing.

Part 5 — Service or Policy Complaints

Service or policy complaints

42(1) Within 10 business days after making or confirming a characterization of a complainant's complaint as a service or policy complaint under section 16 (6), the commissioner must send a copy of the record of complaint to the board having authority over the municipal police department in respect of which the complaint is made.

(2) A discipline authority or an adjudicator who, while considering a conduct complaint, determines that the complaint also includes a service or policy complaint must, within 15 business days after that determination, notify the following of that determination:

(a) the board having authority over the municipal police department to which the complaint relates;

(b) the commissioner.

(3) If, in reviewing a complainant's complaint, the commissioner concludes that the complaint includes a service or policy complaint, the commissioner must notify the chief constable and the board having authority over the municipal police department to which the complaint relates, and the commissioner may include in the notice any recommendations to the board that the commissioner considers advisable.

(4) A police officer may not make a service or policy complaint where the subject matter of the complaint is grievable under any collective agreement that is applicable to the officer.

Investigation of service or policy complaints

43(1) On receiving a copy of the record of complaint under section 42 (1) or a notice of a service or policy complaint under section 42 (2) or (3), the board having authority over the municipal police department to which the complaint relates must promptly do one or more of the following:

(a) request the chief constable of the municipal police department in respect of which the complaint is made to investigate and report on the complaint;

(b) initiate a study, concerning the complaint, with or without the assistance of the director, the Ministry of Attorney General or another public body;

(c) initiate an investigation into the complaint;

(d) dismiss the complaint with reasons;

(e) take any other course of action the board considers necessary to respond adequately to the complaint.

(2) The commissioner may recommend that the board initiate an investigation into a service or policy complaint if the board does not choose to do so under subsection (1).

(3) Within 30 days after initiating an action under subsection (1), the board must notify the complainant, the director and the commissioner regarding the course of action that is being taken.

(4) The commissioner may request a status report from the board regarding the progress of an investigation or study concerning a service or policy complaint, and the commissioner must forward to the complainant a copy of any report the commissioner receives in response to that request.

(5) At the conclusion of an investigation or study under this section, the board must send to the complainant, the director, the chief constable and the commissioner

(a) an explanation of the course of action decided on under subsection (1) in respect of the service or policy complained of, and

(b) a detailed summary of the results of any investigation or study undertaken under subsection (1).

(6) A complainant who is dissatisfied with the board's decisions as disclosed under subsection (5) may, within 30 business days of receiving those decisions, ask the commissioner to review the decisions.

(7) Where a complainant makes a request to the commissioner under subsection (6), the commissioner must complete his review and respond to the request no later than 120 business days from the date it was received.

(8) Whether or not a complainant has asked for a review under subsection (6), the commissioner may review the decisions of a board under this section and may, no later than 120 business days from the date the commissioner received the board's decision, recommend to the board further investigation, study, courses of action or changes to service or policy.

(9) The commissioner must include in the police complaint commissioner's annual report any recommendations made to boards under subsection (7) and may comment on the responses received, if any.

(10) Despite anything in this section, the commissioner may

(a) recommend that the director exercise one or more of the director's functions under this Act, or

(b) recommend that the Attorney General initiate an inquiry under the *Inquiry Act*.

Part 6 — Internal Discipline Complaints

Internal discipline complaints

44(1) For the purposes of internal discipline complaints, the discipline authority must establish procedures, not inconsistent with this Act, for imposing all disciplinary and corrective measures for those complaints.

(2) The procedures established under subsection (1) take effect after

(a) a copy of the procedures is filed with the commissioner, and

(b) the board having authority over the municipal police department with respect to which the procedures are established approves of the procedures.

(3) For the purpose of internal discipline complaints, the discipline authority, the board and any arbitrator that may be appointed under the grievance procedure of the collective agreement may use, but are not restricted by, the Code of Professional Conduct

(a) to determine standards against which the conduct of an officer may be judged, and

(b) to impose disciplinary or corrective measures.

(4) The discipline authority must provide the commissioner with a copy of

(a) any recommendation on disciplinary or corrective measures arising from an internal discipline complaint, and

(b) the final decision reached by the discipline authority, by the board or by an arbitrator respecting an internal discipline complaint.

(5) On request of the commissioner, a discipline authority must provide any additional information about an internal discipline complaint that is in the possession or control of the municipal police department to which the complaint relates.

(6) If the commissioner concludes on the basis of information received that an internal discipline complaint should be dealt with as a public trust complaint, the commissioner may order a further investigation, a public hearing or both.

(7) Whether or not an act or omission of an officer is a disciplinary default, the discipline authority may determine any issues of competence and suitability to perform police duties that arise out of that act or omission, whether or not a complaint is lodged in respect of that act or omission.

(8) Despite anything in this Act, the police complaint commissioner may, on application by a discipline authority, order that a complaint or matter that meets the definition of public trust be processed as an internal discipline complaint.

Part 7 — General

Multiple complaints

45(1) In this section, **"compound complaint"** means a record of complaint made under section 15 that is comprised of 2 or more of the following components:

(a) a public trust complaint against an officer;

(b) an internal discipline complaint against an officer;

(c) a service or policy complaint.

(2) Each component of a compound complaint must be processed as a separate complaint under Part 3 and whichever of Part 4, 5 and 6 is applicable to that component.

Criminal prosecutions and civil remedies not prohibited

46(1) Nothing in this Act or the regulations prohibits

(a) civil or criminal proceedings against a respondent, or

(b) proceedings under the *Labour Relations Code* as to the interpretation, application or operation of a collective agreement.

(2) A decision by Crown counsel not to commence or proceed with criminal charges does not prohibit proceedings under this Act.

(3) This Act applies despite any actual or potential criminal charges arising out of the same facts and circumstances and despite any acquittal, conviction or other outcome pertaining to those charges.

(4) The commissioner may order that proceedings under this Act are suspended for any reason related to the commencement, or potential commencement, of criminal proceedings in which a respondent officer may be involved as an accused or a witness.

(5) The period of the suspension of proceedings must not be counted for the purpose of proceedings under this Act.

(6) Where proceedings are suspended under subsection (4), the commissioner shall notify the discipline authority, respondent and complainant:

(a) of the date of commencement of the suspension, and

(b) of the date that the suspension has terminated.

Oral complaints by the public

47(1) Where a chief constable or the commissioner receives an oral complaint from a person other than an officer, the chief constable or the police complainant commissioner may, if satisfied that the report or complaint is a public trust matter and that it is in the public interest to do so, do any or all of the following:

(a) order that the complaint be reduced to writing and that it be characterized and investigated as a public trust complaint,

(b) issue terms of reference and procedural directives for the investigation, including directions regarding confidentiality under section 48 if the complaint is made in confidence, and

(c) disclose to the complainant such information as a complainant would otherwise be entitled to if a written complaint had been made.

Complaints made in confidence

48(1) Officers are entitled to report to the commissioner the alleged misconduct of any other officer, including the alleged misconduct of a chief constable or a deputy chief constable, if the conduct in question could be the subject matter for a public trust complaint or an internal discipline complaint.

(2) A person who is not an officer may, in submitting a complaint under section 15 or section 47, request that the complaint be kept in confidence and, in that event, subsection (3) to (8) of this section apply as if the complaint were a report made under subsection (1) of this section.

(3) A report under this section may be made orally or in writing to the commissioner and, subject to subsection (7), may be made in confidence and without attribution as to source.

(4) Subject to subsection (7), an oral or written statement to the commissioner, made under conditions of confidentiality, must not be released or revealed to any other body or person in a manner that is likely to identify the person who made the statement, unless the person consents to the release or revelation.

(5) A record of a report or of any of the allegations constituting a report made in confidence under this section is inadmissible as evidence at any discipline proceeding or court proceeding without the consent of the person who made the report.

(6) If a person, including an officer, makes a report in confidence under this section about a public trust matter:

(a) the matter must be processed as a public trust complaint unless otherwise ordered by the commissioner, and

(b) the person who made the report does not have any rights afforded to complaints in the public trust process unless and to the extent granted by the commissioner.

(7) The commissioner may

(a) report to Crown counsel any allegations constituting a report made in confidence under this section, and

(b) order a discipline authority to conduct an investigation into the allegations constituting a report made in confidence under this section and, in that event, the discipline authority must take steps that are practical in the circumstances to investigate the complaint.

(8) Nothing in this section

(a) prohibits Crown counsel from proceeding with criminal charges against a respondent, or

(b) limits or excuses an officer's duty to make a statement for or to testify in an investigation, discipline proceeding, public hearing or inquiry that is conducted or held in relation to another officer under this Act.

Harassment prohibited

49(1) A person who makes a report about the conduct of an officer or submits a complaint under this Act must not be harassed, intimidated or retaliated against for making that report or submitting that complaint.

(2) A person who, contrary to subsection (1), harasses, intimidates or retaliates against a person who makes a report or submits a complaint under subsection (1) commits an offence and is liable, upon conviction, to pay a fine not exceeding $50,000.

Service record of discipline

50(1) The service record of discipline of a respondent must record the complaint dispositions in respect of all complaints against the respondent whether processed as public trust complaints or as internal discipline complaints.

(2) The service record of discipline of a respondent must be kept by the discipline authority in a secure place separate from the respondent's personnel file and the service record of discipline, without the discipline authority's authorization or the respondent's consent, may be disclosed only to the following persons:

(a) the respondent;

(b) the discipline authority;

(c) the commissioner;

(d) an adjudicator;

(e) if the respondent is a member of a police union, an arbitrator appointed under the collective agreement.

(3) If a disciplinary or corrective measure is imposed on or agreed to by a respondent, and the measure includes treatment, counselling or some other program, the respondent's service record of discipline must be updated by the discipline authority to indicate whether the treatment, counselling or other program was completed.

(4) Despite subsections (1)-(3), a discipline authority may expunge a complaint disposition from a respondent's service record only in accordance with any regulations.

(5) A complaint disposition that has been expunged from a respondent's service record shall not be expunged from the respondent's personnel file.

(6) Nothing in this section precludes the internal use of a service record of discipline for non-disciplinary action, including, without limitation, promotion, transfer and reassignment

Appointment of representative for complainants

51(1) Subject to subsection (3), the commissioner may appoint a representative for a complainant as follows:

(a) if the complainant is under 19 years of age, a parent or legal guardian or, if no parent or legal guardian is available or willing to act, a responsible adult;

(b) if the commissioner considers that the complainant is unable to assert his or her rights under this Act because of physical or mental disability, an adult of the complainant's choice or, if no such adult is identifiable, available or willing to act, a responsible adult;

(c) if the complainant dies after lodging a complaint, the administrator or executor of the estate of the complainant or, if no administrator or executor is available or willing to act, a responsible adult.

(2) A representative appointed under subsection (1) has all of the rights and responsibilities available to a competent adult complainant under this Act.

(3) In deciding whether to appoint a representative under this section, the commissioner must consider

(a) whether the complainant is capable of exercising the rights available to a complainant under this Part without the assistance of a representative, and

(b) the wishes of the complainant.

***Freedom of Information and Protection of Privacy Act* does not apply**

52 Except as provided by this Act, the *Freedom of Information and Protection of Privacy Act* does not apply to any record that

(a) arises out of or is otherwise related to investigating a discipline default or making, submitting or processing of a conduct complaint under this Part, and

(b) is created on or after an investigation is underway or a conduct complaint is made.

No fault inquiry

53(1) Where the commissioner determines that it is in the public interest to arrange an efficient inquiry without findings of disciplinary default against individual officers, the commissioner may issue terms of reference and order a no fault inquiry.

(2) Terms of reference under subsection (1) must include a time limit for the completion of the hearing, which must be no later than 120 business days from the date the terms of reference are issued.

(3) An adjudicator may not delay or adjourn a hearing under this section solely on the grounds that a witness wishes to have legal counsel present.

(4) An inquiry under this section is to be conducted by an adjudicator, and section 39 of this Act applies to the appointment of the adjudicator.

(5) An adjudicator is conducting an inquiry under this section has all the powers of a commissioner under ss. 12, 15 and 16 of the Inquiry Act.

(6) The role of commission counsel at an inquiry under this section is non-partisan, and is to assist the adjudicator by tendering such documents and calling such witnesses as may best assist the adjudicator in carrying out his terms of reference in an efficient and fair manner.

(7) An adjudicator conducting an inquiry under this section may make findings of fact and may make recommendations of a preventative or remedial nature, designed to improve the quality of policing, but an adjudicator may not draw any conclusion that an individual police officer committed a criminal act, an act for which the officer would be liable in a civil action, or a discipline default under this Act.

(8) An adjudicator must conduct all hearings in public and must issue his or her report publicly within 30 business days of completing the inquiry.

(9) Evidence tendered at a public hearing is absolutely privileged and may not be used against a person in any civil or criminal proceeding, including a proceeding under this Act.

(10) The costs of hearing under this section shall be paid out of the consolidated revenue fund.

Privative clause and reconsideration

54(1) Every decision of the commissioner under this Act is final, binding and conclusive, and except for jurisdictional questions, must not disturbed by a court unless the decision is patently unreasonable.

(2) Despite subsection (1), the police complaint commissioner may reopen and reconsider any decision he has rendered under this Act based on new information.

Regulations

55(1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

(a) developing procedures for handling complaints from members of the public against a class of officer;

(b) identifying any class or category of officers to whom this Act applies in whole or in part, and for that purpose to identify persons, who by name or position, who constitute the discipline authority where the officer subject to this Act is not an officer respecting whom a chief constable exercises command authority;

(c) providing for the creation of a rules committee to make rules governing the practice and procedure to be followed at public hearings, as defined in section 39;

(d) prescribing a code of conduct applicable to a class of officers, for the purposes of

(i) this Act or any disciplinary matter, and

(ii) establishing guidelines concerning appropriate disciplinary or corrective measures for officers of that class;

(e) prescribing the circumstances in which a discipline default may be expunged from a police officer's service record;

(f) making all or any part of Part 9 applicable, with any modifications that the minister considers necessary or advisable, to a class of officers, other than municipal constables;

(3) For the purposes of regulations under subsections (2) and (5), the Solicitor General may make regulations prescribing classes of officers and the classifications may be based on the different ranks, duties or functions of different officers, the different employers of different officers, the different nature of policing or law enforcement services provided by different officers, or on the following classes of officers under this Act:

(a) provincial constable;

(b) special provincial constable;

(c) designated constable;

(d) municipal constable;

(e) special municipal constable;

(f) auxiliary constable;

(g) enforcement officer.

(4) A regulation under subsection (2) (b), (p), (q), (t) or (u) or subsection (5) may prescribe different regulations for different classes of officers.

Transitional

[to be developed]

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